

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

UNITED STATES OF AMERICA,	:	Docket No. 12-00146
	:	
Plaintiff,	:	
vs.	:	May 2, 2013
	:	
ALEXANDER DERRICK REECE, ET AL.,	:	
	:	
Defendants.	:	Lafayette, Louisiana

REPORTER'S OFFICIAL TRANSCRIPT OF THE HEARING
BEFORE THE HONORABLE PATRICK J. HANNA
UNITED STATES MAGISTRATE JUDGE

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P R O C E E D I N G S

(Call to order of the court.)

THE COURT: This is *United States vs. Alexander Reece*, 12-cr-146, for the continuation of the evidentiary hearing on the motion for prosecutorial misconduct.

Before I let you make your appearances, I wanted to bring to the attention of counsel what I received by way of e-mail correspondence. I am of the opinion that perhaps Judge Foote may have received the same e-mail. I'm going to give you a copy of it. I have not read this. I don't intend to read it. The front page looks the way it does because I took out my personal addresses. It's from a person named Paula Andrews. If Paula Andrews is a lawyer, it's an inappropriate contact with the Court. If Paula Andrews is not a lawyer, it's meaningless. I'm going to put it in the record in the event Ms. Andrews turns out to be a lawyer and needs to be turned in to her respective bar association. All of you folks can have it, but I have not read this nor do I intend to read it.

MR. WALKER: Do you want me to pass it around?

THE COURT: Yes.

And if I learn that Ms. Andrews is a member of the bar somewhere, I will turn her in to the bar association.

All right. Let me have appearances, please.

MR. WALKER: Luke Walker on behalf of the United States.

1 MR. STANFORD: Daniel Stanford, pro se.

2 MR. HIPWELL: Your Honor, Ian Hipwell and
3 Andre Belanger on behalf of the defendant, Richard Buswell.

4 MR. FOSTER: Good morning. I'm Todd Foster along with
5 Michael Skinner on behalf of Mr. Reece who is present in court.

6 MR. DOMINGUE: Barry Domingue with Don Washington.

7 MR. LOTWICK: Good morning, Judge. Joe Lotwick for
8 Daniel Francis whose presence we wish to waive this morning.

9 THE COURT: Granted.

10 Mr. Goode, I have to ask you a question. Do you
11 represent Mr. Stanford?

12 MR. GOODE: No, Your Honor, I do not.

13 THE COURT: Thank you.

14 All right. Mr. Stanford, are you ready to call your
15 next witness?

16 MR. STANFORD: Yes, sir.

17 THE COURT: We still have the rule of sequestration in
18 effect. That was Mr. Paul Buswell and Agent DeSalvo. So who's
19 your next witness?

20 MR. STANFORD: Agent DeSalvo, Judge, and I call
21 Agent DeSalvo under Rule 611(c).

22 THE COURT: All right. Mr. Buswell, remember you can't
23 talk to anybody about your testimony.

24 MR. PAUL BUSWELL: Yes, sir.

25 THE COURT: All right. Let the record reflect

1 Mr. Stockstill has entered the courtroom on behalf of
2 Curious Goods, LLC. Am I correct?

3 MR. STOCKSTILL: Yes, sir.

4 MR. STANFORD: Your Honor, with the Court's permission,
5 I'd like to conduct my examination from the table, and as I need
6 to use the ELMO, I'll walk up to the podium.

7 THE COURT: That's fine.

8 THE COURTROOM DEPUTY: Do you solemnly swear that the
9 testimony you will give in this case will be the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: Yes, I do.

12 THE COURTROOM DEPUTY: Thank you.

13 THE COURT: Agent DeSalvo, give us your name and the
14 town in which you reside.

15 THE WITNESS: Donald DeSalvo. I reside in
16 Dallas, Texas.

17 THE COURT: All right. And please give my gratitude to
18 your supervisor for letting you come back here today.

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. Mr. Stanford, you may proceed.

21 MR. STANFORD: Thank you, Your Honor.

22 Whereupon,

23 DONALD DESALVO

24 was called as a witness; after having been first duly sworn, was
25 examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. STANFORD:

3 Q Good morning, Agent DeSalvo.

4 A Good morning.

5 Q I have lots of questions to ask you and I'm going to try to
6 be very clear in my questions, but if you don't understand me for
7 any reason, just ask me to repeat the question and I'll be glad
8 to do that. I'll be between this table and the podium. I'll go
9 to the podium if I need to put something on the ELMO, and, to
10 that extent, I'll try to speak only when I'm at a microphone for
11 the court reporter and so you can understand. Okay?

12 A Yes.

13 Q Agent DeSalvo, you were the DEA case agent in this case from
14 the beginning of this investigation, I guess, until your transfer
15 to Dallas?

16 A I was the supervisor of the investigation. I did assign a
17 case agent to the investigation.

18 Q Who was the case agent that you assigned?

19 A Will White.

20 Q When did you assign Will White as the case agent?

21 A Well, Will White was initially assigned to DEA for a special
22 case, so he wasn't a full-time task force agent. During the
23 middle of this investigation -- at the beginning of it
24 Kane Marceaux was a representative from the Lafayette Police
25 Department. Kane Marceaux was pulled from the task force.

1 Within weeks Task Force Agent White was his replacement. There's
2 a period of background checks and there's a process where it
3 doesn't happen overnight where he gets approved to become a task
4 force agent. He was sort of in limbo, but he had been working
5 the investigation as a metro narcotics agent as well, so he was
6 the case agent, but officially didn't become the case agent until
7 much later.

8 Q When was that?

9 A That was probably when he was deputized, and I don't recall
10 that date, but it was probably the spring of 2012.

11 Q Would it have been prior to April -- I mean, April 5th,
12 2012, that he was deputized?

13 A It could have been, yes. I don't know the exact date.

14 Q And during this investigation either you or agents working
15 under your supervision interviewed over 40 witnesses. Would that
16 be accurate?

17 A About 40 witnesses. I don't have the exact amount. I don't
18 know exactly, but about 40 witnesses, maybe more, maybe a few
19 less.

20 Q And some of the people that were debriefed pursuant to your
21 investigation were Drew Green; is that correct?

22 A That's correct.

23 Q Thomas Malone?

24 A Correct.

25 Q Boyd Barrow?

1 A Yes.

2 Q Josh Espinoza?

3 A Yes.

4 Q Paul Buswell?

5 A Well, Paul Buswell wasn't necessarily debriefed, but, yes,
6 we spoke to Paul.

7 Q Well, when I say "debriefed," I'm also using it in a generic
8 sense meaning interviewed as well.

9 A Yes.

10 Q Barry Domingue?

11 A Yes.

12 Q Richard Buswell?

13 A Yes.

14 Q And were DEA-6s prepared specifically for Mr. Green, Malone,
15 Barrow, and Espinoza's debriefings?

16 MR. WALKER: I would object as to relevance for this
17 hearing.

18 THE COURT: What is the relevance of this,
19 Mr. Stanford?

20 MR. STANFORD: Judge, later it may become important. I
21 just want to determine at this point generally whether or not
22 these debriefings were documented by a DEA-6 or not given
23 Agent White's testimony that he had an encounter with Mr. Buswell
24 April 24th that was not documented. I'm just trying to
25 determine which interviews that I'm going to be dealing with were

1 or were not documented.

2 THE COURT: The objection is overruled.

3 You can answer.

4 THE WITNESS: I'm sure there were DEA-6s completed. I
5 would have to verify that, but generally I believe so.

6 BY MR. STANFORD:

7 Q And were you also aware and were you given copies of
8 Agent White's recorded interviews that he did on
9 December 8th of 2011?

10 A Was I given copies of -- I don't recall getting copies.

11 Q Are you aware that there are recorded -- tape recorded or
12 audio recorded interviews of numerous witnesses on that date?

13 MR. WALKER: Again, Your Honor, I object to relevance.

14 THE COURT: You can answer.

15 Overruled.

16 THE WITNESS: There were two investigations that were
17 being run parallel. The first investigation was metro narcotics.
18 We weren't involved in that investigation initially. And they
19 continued their investigation, so there may be numerous
20 recordings as part of their investigation that I didn't
21 necessarily receive.

22 BY MR. STANFORD:

23 Q Okay. But I'm only specifically interested in the ones
24 Agent White, who was working for you, conducted. Did Agent White
25 tell you that he recorded the recorded interviews of a number of

1 witnesses on December 8th?

2 A Well, he wasn't working for me December 8th.

3 Q I understand that, but --

4 A That was your question. You asked if December 8th -- he
5 wasn't. He was working for metro narcotics and he did do some
6 recordings. I don't have access. I didn't have access. That's
7 probably in the metro narcotics case file.

8 Q Okay. So you don't have those?

9 A Right now I would have to look through the case file to see
10 if he subsequently put those in the case file. I don't know. I
11 can't answer that.

12 Q Now, you were also present at the detention hearings for
13 Mr. Barrow and Mr. Espinoza as well as the initial appearances
14 and the guilty pleas, correct?

15 A I believe so, yes.

16 Q And the same for Mr. Green and Mr. Malone?

17 A Yes. I believe I was there for them. I may have missed
18 one.

19 Q Now, in the beginning of the investigation, and I believe
20 you testified previously, you were aware that Richard Buswell and
21 others purchased Curious Goods from Jack Leblanc; is that right?

22 A Yes, I believe so.

23 Q And you were also aware that Curious Goods and/or
24 Jack Leblanc had been selling a potpourri product for a number of
25 years prior to 2010; is that correct?

1 A I didn't say that, no.

2 Q I'm asking you are you aware of that.

3 A No.

4 Q You didn't know that?

5 A I did not know that.

6 Q You make reference in the February 15th, 2012, interview
7 of Paul Buswell. Do you remember being at a February 15th,
8 2012, interview of Paul Buswell with Agent White?

9 A I remember being in an interview with Paul Buswell, yeah, a
10 few of them. I don't recall. It could have been the 15th.

11 Q Were all of Mr. Buswell's interviews recorded?

12 A I don't believe so.

13 THE COURT: Now, Mr. Stanford, because we have two
14 Mr. Buswells, I'm going to ask you, when you say that, to
15 indicate Paul versus Richard.

16 MR. STANFORD: You're correct, Your Honor.

17 THE COURT: Thank you.

18 BY THE COURT:

19 Q Do you know if all the interviews of Paul Buswell were
20 recorded?

21 A I don't believe all of them were recorded, no.

22 Q Some of the phone calls to Paul Buswell and the
23 February 15th interview with you and Agent White were recorded?

24 A The 15th, yes. The interview -- if it was at the -- there
25 was one at the Lafayette Police Department that Mr. Buswell came

1 to.

2 Q During that meeting there was a third person present. Who
3 was that? Another agent besides you and Agent White.

4 A I believe it was Ryan Shanahan.

5 Q And early in the investigation, I would say December of
6 2011, you and Agent Marceaux were involved with some of the
7 search warrants and working side by side with metro narcotics in
8 December of 2011?

9 A No. No, sir. We were actually not invited to that search
10 warrant. Kane Marceaux was told that he needed to assist the
11 police department, the metro narcotics, and he was -- which is a
12 normal procedure. Many times there's special occasions where the
13 police department overrules DEA because that's the parent agency
14 and says you need to assist us for manpower purposes, but
15 actually DEA was not invited on that search warrant and we did
16 not participate.

17 Q Were you involved in any of the search warrants?

18 A No, I was not.

19 Q Were you aware that Agent Ryan Shanahan was the agent for
20 the Lafayette Metro Narcotics investigation in December, January,
21 February, March?

22 A Yes. He could have been.

23 Q Were you present for a meeting and a search on
24 December 16th of the warehouse at 310 Pinehurst in Lafayette?

25 A On the 16th, yes, I was.

1 Q So you did participate in some of the search warrants?

2 A Not on the 8th. I participated after that. We were not
3 invited to that search warrant. We received no calls from metro
4 asking us to participate. Subsequent to that they asked for our
5 assistance on a few matters relating to the synthetic drug
6 industry and this happened after the search warrants. I sort of
7 invited myself to that search warrant on Pinehurst after the fact
8 to gather more facts for them, for their investigation. Also, I
9 started to take an interest in the investigation as well.

10 Q Well, the case report indicates that you were present for a
11 debriefing on the 16th that was conducted by Captain Vincent.
12 Do you remember that?

13 A Yes.

14 Q And I'm also going to show you a copy which is with the
15 application -- or the affidavit for the search warrant. You can
16 see where I have it highlighted. It shows Agent Ryan Shanahan,
17 assigned case agent for the operation. So there was no mystery
18 that Agent Ryan Shanahan was the case agent for the state case?

19 A Correct.

20 Q And you had some involvement as early as mid-December in
21 this case?

22 A Well, immediately after the search warrant there were
23 some -- they asked for some information, and they started to show
24 me some of the evidence gathered in the search warrants that were
25 on the 8th. That's when I started to get involved.

1 Q Okay. And when did you first determine AM-2201 was a
2 controlled substance analogue under the Analogue Act?

3 MR. WALKER: I'm going to object. I don't know the
4 relevance of this for the prosecutorial misconduct motion.

5 THE COURT: I have the same question.

6 MR. STANFORD: I'm sorry, Judge?

7 THE COURT: I have the same question. What's the
8 relevance of this?

9 MR. STANFORD: Well, Judge, it goes to partly the
10 *Garcia* hearing for purposes of whether anybody with the
11 Curious Goods operation knew that AM-2201 was a controlled
12 substance analogue, and I'm asking Agent DeSalvo because he
13 testified that he knew at some point in time that it was.
14 I wanted to question him when specifically did he know and how
15 did he know that.

16 MR. WALKER: And, Your Honor, I would object to that.
17 It's not relevant for the purpose of this hearing.

18 THE COURT: I'm going to let him answer, but I don't
19 really see the relevance. I remember the testimony from the
20 *Garcia* hearing very well.

21 You may answer.

22 THE WITNESS: The date exactly I don't recall. What I
23 did was once I was told the chemical in question, which was going
24 to be after December 8th, I contacted DEA chemists and said can
25 you tell me what you know about AM-2201. That's when they

1 advised it was an analogue.

2 BY MR. STANFORD:

3 Q Do you remember which chemist you spoke to?

4 A I spoke to a lot of chemists.

5 Q With the DEA?

6 A Yes.

7 Q Prior to December 8th had you received anything in your
8 field office from the DEA advising you which substances the DEA
9 considered to be controlled substance analogues?

10 MR. WALKER: I again object. It's not relevant.

11 THE COURT: Sustained.

12 BY MR. STANFORD:

13 Q You testified --

14 MR. STANFORD: And, Judge, just for the record, I'm not
15 trying to rehash the *Garcia* hearing, but I am making a new record
16 in these proceedings.

17 THE COURT: I understand that.

18 MR. STANFORD: The Court may be aware of what was said.
19 If another tribunal has to review it, they won't know it, so...

20 THE COURT: Part of the reason we're having this
21 hearing, Mr. Stanford, as I told you before, was that a lot of
22 your allegations come from another criminal proceeding, so I am
23 going to give you some leeway to create that record in this
24 proceeding, but we're not going to sit here and have an
25 examination of Agent DeSalvo on the issue of whether something is

1 or isn't a controlled substance analogue or when they became
2 aware of it because it's not relevant to the issue of
3 prosecutorial misconduct.

4 BY MR. STANFORD:

5 Q You stated -- you testified in May at the last hearing that
6 a ban was passed due to serious concerns and public safety
7 concerns?

8 A Which hearing? You said last hearing. Which hearing?

9 Q I'm sorry. The May 14th hearing, the *Garcia* hearing.

10 A Okay.

11 Q Do you remember testifying that the emergency ban was
12 enacted due to serious concerns and public safety concerns?

13 A It was a long time ago. I would have to see a transcript.
14 I don't recall exactly what I said.

15 THE COURT: I've got one.

16 THE WITNESS: Thank you, Your Honor.

17 BY MR. STANFORD:

18 Q At page 11, lines 22 to 25.

19 A Okay. I see that.

20 Q Okay. Now, in talking to witnesses, specifically
21 Mr. Paul Buswell and Mr. Richard Buswell, you also mentioned
22 serious safety concerns and issues that the DEA had regarding
23 synthetic cannabinoids; isn't that true?

24 MR. WALKER: Again, I object to relevance.

25 THE COURT: Overruled.

1 You can answer it.

2 THE WITNESS: Yes.

3 BY MR. STANFORD:

4 Q And you made comments to Mr. Paul Buswell and
5 Mr. Richard Buswell -- Mr. Paul Buswell on February 15th and
6 Mr. Richard Buswell on April 5th -- that you had received
7 information directly about instances of serious injury or deaths,
8 emergency room visits. Is that true? Do you have any
9 information from anyone in the Lafayette or Louisiana area
10 regarding ER visits, deaths, serious injuries from the use of
11 Mr. Miyagi?

12 A Well, I don't know if I recall saying it was for Mr. Miyagi.
13 From this industry, yes, I do have information.

14 Q Okay. I'll narrow it.

15 Do you have any information regarding Mr. Miyagi, that
16 Mr. Miyagi has caused any injuries, slight or otherwise?

17 A I believe so, but not in particular. I don't know if it was
18 in Louisiana. I don't recall exactly. I generally was speaking
19 going the industry itself.

20 Q And not Mr. Miyagi?

21 A Not necessarily Mr. Miyagi. I didn't personally know of a
22 individual that was smoking Mr. Miyagi that had those instances.

23 Q Okay. And since those instances, you don't have any
24 additional information, do you?

25 A No.

1 Q Now, you were aware during the course of your investigation
2 that JWH-018, which is one of the five banned substances, was
3 never in the Mr. Miyagi product?

4 A Honestly not that I know of, correct.

5 Q Well, you interviewed Mr. Thomas Malone and Mr. Drew Green,
6 correct?

7 A Will White interviewed them. I participated in part of the
8 interviews.

9 Q Okay. And you are Mr. White's supervisor?

10 A Correct.

11 Q Did you interview here in Lafayette or in Georgia?

12 A I talked to him in Lafayette, I believe.

13 Q When you say "him," Mr. Malone and -- both Mr. Malone and
14 Mr. Green?

15 A Yes.

16 Q Okay. And on July 19th, 2012, you also interviewed
17 Mr. Boyd Barrow in Atlanta; isn't that correct?

18 A I'm sorry?

19 Q In Georgia.

20 A Boyd Barrow?

21 Q Boyd Barrow.

22 A No, I don't think so.

23 Q There's a GBI investigative report -- actually an affidavit
24 where GBI Agent Ken Howard is noting an interview with Mr. Boyd
25 Barrow of July 19th, 2012, in which you and Agent White

1 participated?

2 A It wasn't in Georgia. It was at Tim Meche's office in
3 New Orleans.

4 Q Okay. My apologies.

5 A If that's the one that we interviewed. I recall an
6 interview in New Orleans.

7 Q Okay. Now, as far as Mr. Malone and Mr. Green, you were
8 aware, after interviewing them and receiving documents concerning
9 their involvement in NutraGenomics, that they were also involved
10 in a number of other companies besides NutraGenomics?

11 MR. WALKER: And I would object again, Your Honor, to
12 relevance.

13 THE COURT: What's the relevance of that, Mr. Stanford?

14 MR. STANFORD: Judge, part of my motion for
15 prosecutorial misconduct is selective prosecution, vindictive
16 prosecution, and misstatement of facts. For me to be able to get
17 into those specific areas later, I need to lay a foundation.

18 And under the definition of relevant evidence, it means
19 any evidence having any tendency to make the existence of any
20 fact that is of consequence to the determination of the action
21 more probable or less probable than it would be without the
22 evidence.

23 Specifically I think this evidence is probative of the
24 proposition that I'm attempting to prove up, and the proposition
25 is of consequence to the determination of the issues that have

1 been presented in my motion.

2 MR. WALKER: And, Your Honor, I would submit that a
3 motion to dismiss and a hearing on a motion to dismiss is not a
4 fishing expedition. It should be narrowly tailored to the
5 matters that were submitted in the motion.

6 THE COURT: Mr. Stanford, I'm not following this.
7 Mr. Malone and Mr. Green were both prosecuted in this case, and
8 if you're saying it's a selective prosecution or a vindictive
9 prosecution, I'm not following your analysis because both of
10 those gentlemen were prosecuted.

11 MR. STANFORD: They are being prosecuted, Judge, but
12 selectively, and for me to get what I need to prove to the Court,
13 I need to lay a foundation with this witness. And I'm not going
14 to belabor the point. I'm just asking him general background
15 questions and not getting into the specifics, but I need that as
16 a foundation.

17 THE COURT: Overruled.

18 Go ahead, Agent DeSalvo.

19 BY MR. STANFORD:

20 Q You are aware that Mr. Malone and Mr. Green primarily
21 operated out of NutraGenomics Corporation -- or LLC. Is that
22 accurate?

23 A That's accurate.

24 Q And under that general company they had at least eight or
25 nine other companies that they also ran in conjunction with

1 NutraGenomics?

2 A Eight or nine. I'm not aware of exactly how many companies.

3 Q Would it be Nature's Euphoria, Nature's Science, Blue Moon
4 Holding?

5 A It could be, yes.

6 Q Bottom Line Marketing?

7 A It could be.

8 Q Coalition for Cognitive Liberty, GTM Management, Biogenics,
9 Dungeon Family?

10 A Several of those I've never heard of before.

11 Q Okay. And the last question on that is, during the course
12 of the investigation you learned through looking at various
13 transactions that approximately \$10,000,000 were shuffled between
14 a number of these companies between January of 2011 and May of
15 2012. Is that accurate?

16 A I recall \$10,000,000 on some tax forms, but whether or not
17 it was actually shuffled between companies, I honestly -- that
18 part of the investigation was handled by Special Agent Harbourt.

19 Q Okay. You were aware in conducting your interviews that
20 NutraGenomics and/or Mr. Malone and Mr. Green were responsible
21 for creating Mr. Miyagi?

22 A Yes.

23 Q Were you told the first substance that was used or the first
24 chemical used in the Mr. Miyagi product?

25 A I do not recall.

1 Q But you do know that it was not JWH-018?

2 A Honestly I don't recall that.

3 Q And NutraGenomics began manufacturing, labeling, and
4 packaging Mr. Miyagi sometime in April or May of 2010?

5 A That's possible. I don't recall exactly.

6 Q And in talking to Mr. Malone and Mr. Green and looking at
7 the records, there's no evidence that I've ever had any contact
8 with NutraGenomics, is there?

9 A No.

10 Q And there's no evidence that I had anything to do with the
11 formulation of Mr. Miyagi, is there?

12 A No, sir.

13 Q Or the manufacturing of Mr. Miyagi?

14 A No.

15 Q Or the packaging of Mr. Miyagi?

16 A No.

17 Q Or the distribution of Mr. Miyagi?

18 A At some point in time I think you were involved in part of
19 that toward the tail end of this investigation.

20 Q What do you consider the tail end?

21 A After Mr. Buswell, Mr. Richard Buswell, was jailed on the
22 revocation hearing, you got involved.

23 Q So you're talking after December 15th?

24 A That's correct. Well, before and after, but I know for a
25 fact after you were involved in discussions as far as the

1 marketing and sales.

2 Q Okay. After Mr. Buswell -- after the raid of
3 December 8th, 2011, was the Mr. Miyagi product ever again sold
4 in Curious Goods, northside or Kaliste Saloom?

5 MR. WALKER: And, again, Your Honor, I object to
6 relevance.

7 THE COURT: That's overruled.

8 THE WITNESS: I don't know if it was or not. It may
9 not have been.

10 BY MR. STANFORD:

11 Q Would it be fair to say as far as you know, based on your
12 investigation, after December 8th it was not sold?

13 A Well, go back to your question. It may not have been
14 Mr. Miyagi. It may have been the next product that was going to
15 be called -- that was going to be the new product for
16 Curious Goods. That's what I'm referring to as far as the
17 marketing and sales. Mr. Miyagi, I don't know. I don't have
18 that answer. I'm sorry.

19 Q Okay. So you don't know if Mr. Miyagi was ever sold again
20 at Curious Goods after December 8th, 2011. Is that your
21 answer?

22 A I don't believe it was, but I don't know that for a fact.

23 Q And in conjunction with your investigation, no other
24 potpourri or incense product like Mr. Miyagi was sold in
25 Curious Goods, northside and Kaliste Saloom, the corporate

1 stores, after December 8th, 2011, also?

2 A No. They were trying to get a new product.

3 Q I'm sorry. My question is not if they were trying, but --

4 THE COURT: He answered the question. He said, "No.
5 They were trying to get a new product."

6 MR. STANFORD: Thank you.

7 BY MR. STANFORD:

8 Q Now, in conjunction with your investigation, you also
9 interviewed Mr. Pat Chauvin who was an owner of Curious Goods,
10 correct?

11 A That's correct.

12 Q And you interviewed him sometime in January of 2011?

13 A That's possible.

14 Q Do you recall if you recorded that interview?

15 A I believe it was recorded, yes.

16 Q And was a DEA-6 prepared?

17 A I don't recall.

18 Q Based on what Mr. Chauvin told you, you learned that he and
19 Mr. Buswell had visited NutraGenomics in January of 2011?

20 A That's possible. I honestly do not recall the interview
21 that well. He was interviewed. There were so many interviews, I
22 honestly just can't recall exactly what each person stated.

23 Q Now, when you interviewed Mr. Boyd Barrow in July at
24 Mr. Meche's office in New Orleans, that would have been the
25 summer of 2012 after he was indicted on the first indictment, but

1 before the superceding indictment. Do you remember that
2 interview?

3 A Yes, I do remember the interview.

4 Q Okay. Mr. Barrow also confirmed to you that JWH-018 was
5 never a substance in Mr. Miyagi. Isn't that true?

6 A Honestly I do not recall exactly what he stated in that
7 interview. I would have to have --

8 Q Was a DEA-6 prepared?

9 A I'm sure it was, yes.

10 Q Was a recording made of that interview?

11 A No, it was not.

12 Q And during that interview Mr. Barrow told you that he had
13 contacted -- his criminal lawyer in Atlanta was a man named
14 Jim Peters. Do you remember that?

15 MR. WALKER: I object, Your Honor, to relevance.

16 THE COURT: What's the relevance of this, Mr. Stanford?

17 MR. STANFORD: I'm getting to -- the relevance is,
18 Judge, it regards an Attorney General letter or notice of the
19 Attorney General, which I think the agent was confused and
20 misstated at the *Garcia* hearing and perhaps at the Grand Jury,
21 and I just -- I want to -- there's two things that I need to go
22 over with this agent to make sure that -- what I'm trying to
23 determine is whether he knew this information and whether he
24 perhaps misstated this information at the hearing or to the
25 Grand Jury.

1 THE COURT: Objection overruled. You can answer it.

2 BY MR. STANFORD:

3 Q Did you learn that Mr. Barrow had a lawyer in Atlanta by the
4 name of Jim Peters?

5 A Yes.

6 Q And that Mr. Barrow asked Mr. Peters to contact the
7 Georgia Attorney General's Office regarding the sale of
8 Mr. Miyagi, the Mr. Miyagi product, to determine whether he could
9 or he couldn't?

10 A I vaguely recall something about that, yes.

11 Q And also in your interview with Paul Buswell on
12 February 15th you brought up the question of whether or not
13 there was an Attorney General letter that was ever circulated
14 around and specifically whether or not I had an Attorney General
15 letter. Do you remember asking Mr. Paul Buswell that?

16 A Yes. Several individuals said you did have a letter.

17 Q Okay. And Mr. Buswell told you that the Attorney General
18 letter was referring to Dan Francis. Do you recall when he told
19 you that?

20 THE COURT: Which Mr. Buswell?

21 MR. STANFORD: Mr. Paul Buswell.

22 THE WITNESS: Mr. Paul Buswell could have said that. I
23 don't recall if he said Dan Francis. He may have, but several
24 individuals said you had the letter.

25 MR. STANFORD: Judge, I had the February 15th, 2012,

1 interview with Mr. Paul Buswell transcribed. I don't know if the
2 Court will allow me to use the transcription that I've made,
3 which is by the same person who made the April 5th, 2012,
4 transcription of Mr. Richard Buswell's interview that I think the
5 Court has read, but I was going to give a copy to Mr. DeSalvo so
6 that he could follow along on some key points that I'm going to
7 make during this part of the examination.

8 THE COURT: Any objection, Mr. Walker?

9 MR. WALKER: I haven't seen the transcript. I haven't
10 been able to review the transcript, and so --

11 MR. STANFORD: I just got it yesterday.

12 MR. WALKER: Can the defense tell me who it is that
13 made the transcript?

14 MR. STANFORD: Ms. Amber Taylor. She's the same
15 transcriptionist who did the April 5th, 2012, interview with
16 Agent DeSalvo and Agent White that I provided to the
17 U.S. Attorney's Office.

18 MR. WALKER: Your Honor, my issue is I just haven't
19 been able to review it, so I can't say.

20 THE COURT: Why don't we take it question by question
21 and see how it goes.

22 MR. WALKER: Sounds good.

23 THE COURT: Ms. Taylor did the other one. I've already
24 read that one. So we'll take it question by question.

25 BY MR. STANFORD:

1 Q Could you turn to page 25. Do you see in the middle of the
2 page where it says -- you're saying, "He had a letter from the
3 State of Louisiana?" And Paul Buswell said, "We were told that."

4 A Yes.

5 Q And Mr. White said, "It was not Stanford, it was Francis?"
6 And Paul Buswell said, "Francis."

7 A Yes. He was surprised because everyone else told us it was
8 you.

9 Q And no one has ever said that they actually saw this letter?

10 A No. Mr. Domingue explained that you told them or others
11 that you had the letter, and as everyone was arrested, it became
12 that it was a phone call. Then Mr. Domingue said he believed
13 that it probably wasn't a phone call.

14 Q Okay. Now, the next individual I'm going to talk to you
15 about is Preston James Ackerman. Do you remember being involved
16 in an interview of Mr. Ackerman on July 25th, 2012, in Georgia?

17 A July 25th?

18 Q Yes.

19 A In Georgia?

20 Q That would be the day they did the search warrants at
21 NutraGenomics.

22 A Yes, yes, yes.

23 Q Okay. And you were -- you, Agent White, and Agent Howard --
24 yeah, Ken Howard -- interviewed Mr. Preston James Ackerman on
25 that date, correct?

1 A Yes.

2 Q Was that interview recorded?

3 A Not to my knowledge.

4 Q Was a DEA-6 made of that?

5 A I believe so. If not, there was a GBI report.

6 Q And one of the discussions with Mr. Ackerman was the fact
7 that you discussed lab reports, that NutraGenomics maintained lab
8 reports on all products, correct?

9 A I honestly do not recall the conversation.

10 Q And Mr. Ackerman also confirmed for you and Agent White that
11 JWH-018 was never used in Mr. Miyagi?

12 A I don't even recall what Preston Ackerman looks like to be
13 honest with you.

14 Q Did you or Agent White or any of the federal investigators
15 working the Curious Goods case, did you ever issue a subpoena for
16 Mr. Drew Green or Thomas Malone to their internet provider for
17 all of their e-mails to business associates and whomever for a
18 certain time frame?

19 MR. WALKER: Objection to relevance.

20 THE COURT: Mr. Stanford?

21 MR. STANFORD: Judge, I'm trying to find out if the
22 government is in possession of these lab reports. I have one
23 e-mail from Thomas Malone to Mr. White where there's a DEA-6 note
24 that Agent DeSalvo saw where he's contacted the RTP Labs,
25 Alston Sykes, and attached 22 lab reports, but those are not in

1 our discovery packet.

2 MR. WALKER: Your Honor, this is not a discovery
3 motion. This is a motion to dismiss. The questions he's asking
4 are not relevant for the purpose of this.

5 MR. STANFORD: The question I asked was did they issue
6 a subpoena to the internet provider for the e-mails of Mr. Malone
7 and Mr. Green.

8 THE COURT: And am I correct, Mr. Stanford, the purpose
9 of this question is to see whether or not there is information
10 out there that has been withheld from you?

11 MR. STANFORD: Relevant information that is being
12 withheld, yes, sir.

13 THE COURT: Answer the question.

14 THE WITNESS: It depends on the date. There were some
15 subpoenas sent, but I left right after the indictment. The
16 investigation continued. They may have issued subsequent
17 subpoenas without my knowledge. I have been out of the loop for
18 a good part of six, eight months.

19 THE COURT: Let me ask you this, Agent DeSalvo. When
20 were you no longer involved in the investigation in this case?
21 When did your involvement stop other than having to come here and
22 testify?

23 THE WITNESS: Probably the end of last year. I
24 received the orders for my transfer in September of 2012. At
25 that point I started to wind things down and kind of move out of

1 the role I was in prior to that, but the end of the year -- the
2 end of December were my last days here.

3 BY MR. STANFORD:

4 Q December of 2012?

5 A Yes, about December of 2012, the beginning of 2013.

6 Q I'm going to show you a DEA-6.

7 THE COURT: Mr. Stanford, do you know how to make that
8 a little bit bigger so that we can see it? Agent DeSalvo has
9 great eyes, but the old guy up here doesn't.

10 MR. STANFORD: Do you want me to zoom in, Judge?

11 THE COURT: Just a little bigger so I can read it if
12 you don't mind.

13 Thank you. There you go.

14 THE WITNESS: Okay. Yes. I may have approved that
15 report, yes. That was about two weeks after I received my
16 orders.

17 BY MR. STANFORD:

18 Q Okay. So is it usual for the DEA to allow defendants and
19 defendants who have pled guilty to decide what information or
20 evidence they want to turn over to the DEA after the fact?

21 A If he's cooperating, he's going to provide information over
22 to us pursuant to his agreements with the U.S. Attorney's Office.

23 Q And this kind of dovetails back into -- it's a five-page
24 document and it makes reference to the fact that he's attached
25 22 lab reports, but it kind of dovetails into did your agency --

1 if you're interested in this information, did you do a subpoena
2 to his internet provider to capture all of his e-mails to
3 whomever he would have sent, including Mr. Sykes, and received
4 during the relevant time period of the indictment? Did you do
5 that?

6 A I believe there was a search warrant on Mr. Sykes' computers
7 and I believe there was a search warrant -- not that we
8 conducted, but there was a search warrant on NutraGenomics'
9 e-mail accounts. I recall that, but I wasn't a part of the
10 discovery process whatsoever, so I don't know what was turned
11 over or not.

12 Q Well, I understand that, and I'm not asking you to guess at
13 what was turned over or not, but I'm merely questioning you
14 about --

15 A There were certain -- there were subpoenas sent to
16 NutraGenomics, Pinnacle, a variety of e-mail accounts, yes, and
17 there was information that was recovered. That part of the
18 investigation was handled by Agent Erol Catalan, so I didn't see
19 everything that was recovered. There was so much information, I
20 didn't review everything, but I know that there was a lot
21 recovered from NutraGenomics, Pinnacle, all those accounts which
22 had e-mails from Drew Green and Tommy Malone.

23 MR. STANFORD: At this time, Judge, I'd like to offer,
24 file, and introduce this DEA-6 which is in globo. It's a
25 five-page document that I've marked as S-4. My prior exhibits

1 were S-3, then S-5 and 6, so I'm going to fill in the gap with
2 S-4.

3 THE COURT: Any objection, Mr. Walker?

4 MR. WALKER: No, Your Honor.

5 THE COURT: Without objection, let it be admitted.

6 BY MR. STANFORD:

7 Q And for ease of reviewing, Agent DeSalvo, I'll provide you
8 with a copy. Did the DEA issue a search warrant and/or receive
9 all of the lab reports from RTP Labs that deal with
10 NutraGenomics, Pinnacle Products?

11 THE COURT: Those are two questions, Mr. Stanford.

12 MR. STANFORD: I'll break them down one at a time.

13 THE COURT: Thank you.

14 BY MR. STANFORD:

15 Q Did you do a search warrant and receive lab reports from RTP
16 Labs -- do a search warrant on RTP Labs and receive lab reports
17 from RTP Labs regarding NutraGenomics?

18 A Yes. We didn't, not this office, no.

19 Q Which office did that?

20 A It was out of the office based wherever Triangle Park Lab is
21 located, which is in, I think, the Carolinas.

22 Q Did that office share that information with you, with your
23 office?

24 A I believe so.

25 Q Okay. And if you look at the third page, three of five, at

1 the bottom Mr. Malone is -- he's sending you an e-mail from
2 Alston that had 22 lab reports attached. Did you receive the 22
3 lab reports?

4 A I personally, no. Agent White probably received them.

5 Q Okay. And you assume that they were turned over to the
6 government?

7 A I honestly don't know.

8 Q I'm going to show you an e-mail. Here's the cover page.

9 It's submitted by Drew Green on August 28th of 2012 and it's
10 invoices from NutraGenomics to Pinnacle Products and

11 Richard Buswell. On August 28th, 2012, Mr. Green had not pled
12 guilty yet; isn't that true?

13 A I don't know the date that he pled guilty.

14 Q He was indicted September 4th of 2012, so on this date he
15 would not have already pled guilty?

16 A He was indicted when?

17 Q September 4th, 2012, in the superceding indictment.

18 A Okay. That's possible.

19 Q So was Mr. Green and Mr. Malone cooperating with DEA prior
20 to his indictment?

21 A Yes, he was.

22 Q And is it common for the DEA to allow cooperating witnesses
23 who are targets to provide information to your agency on, I
24 guess, an as needed or need to know basis from them to you?

25 A I do not understand your question.

1 Q Well, it appears that -- let me talk about NutraGenomics.
2 Did you do a search warrant of NutraGenomics and capture all of
3 the invoices, paperwork, that NutraGenomics did between
4 NutraGenomics and whomever their customer base was around the
5 country, but specifically with Pinnacle and Curious Goods?

6 MR. WALKER: And, again, Your Honor, I object to
7 relevance for this motion.

8 THE COURT: Relevance, Mr. Stanford?

9 MR. STANFORD: Judge, I'm trying to lay a foundation to
10 determine, based on this e-mail and other e-mails, what this
11 agent knew prior to the indictment with regards to Mr. Miyagi and
12 the practices and procedures of NutraGenomics and
13 Pinnacle Products.

14 MR. WALKER: And for the purpose of this motion, that's
15 not relevant, Your Honor. Beyond that, the argument that he's
16 simply laying groundwork, if he wants to direct his attention to
17 a specific e-mail, that's one thing, but he's attempting to get
18 background information that goes beyond the motion.

19 THE COURT: I agree.

20 MR. STANFORD: I'm talking about --

21 THE COURT: I agree. Objection sustained.

22 BY MR. STANFORD:

23 Q I'll show you the third page of this document which is one
24 evidencing the August 28th, 2012, Drew Green e-mail providing
25 invoice orders for Pinnacle Products and Richard Buswell. And

1 now I'm at the bottom here. That would be your signature on it;
2 is that correct?

3 A Yes.

4 MR. STANFORD: I'd like at this time to offer, file,
5 and introduce that as S-7.

6 THE COURT: Any objection, Mr. Walker?

7 MR. WALKER: Your Honor, I don't see the relevance of
8 the document, so I would object.

9 THE COURT: Overruled. Let it be admitted.

10 BY MR. STANFORD:

11 Q The next documents I'm going to show you, Agent DeSalvo, are
12 the actual invoices that were provided to your office by
13 Mr. Green on August 28th of 2012. It's an in globo offering.
14 There were a number of invoices that were provided, but it
15 appears from the batch that I got, the earliest invoice between
16 NutraGenomics and Pinnacle was August 25th of 2010. Can you
17 see that?

18 A Yes.

19 Q And it was for the Mr. Miyagi product?

20 A Yes.

21 MR. WALKER: And, Your Honor, absent there being
22 something to justify its introduction, I don't see how these
23 invoices are in any way relevant to the defense motion. They
24 weren't in any way noticed in this motion and they don't in any
25 way demonstrate misconduct. Clearly we turned them over to him,

1 so he can't argue it wasn't in discovery.

2 MR. STANFORD: Well, I just have a specific question
3 concerning these.

4 THE COURT: I understand where you're coming from. The
5 objection is overruled.

6 BY MR. STANFORD:

7 Q Now, given the invoices and the background, you established
8 that Pinnacle Products began handling Mr. Miyagi as early as
9 August 25th of 2010, correct?

10 A Yeah, but just because those are the documents we have
11 doesn't mean that it didn't happen prior to that. Those are a
12 certain batch of documents that --

13 Q But if that's the earliest date we have, we know for sure
14 that at least by August --

15 A At least by that, yes. According to those documents, yes.

16 Q And based on your investigation, were you able to determine
17 the active ingredient or chemical that was being utilized in the
18 Mr. Miyagi product in August of 2010?

19 A Based on that document? If I could see it, I would tell
20 you, but I cannot see it. This monitor isn't working. I don't
21 see anything on this monitor.

22 Q And while you have all the copies, I would ask that you look
23 through them, and the same question would apply to the other
24 invoices as well.

25 A And your question is -- I'm sorry.

1 Q Do you know what the active ingredient or the chemical
2 substance in Mr. Miyagi was back in August of 2010?

3 A I do not.

4 Q Did you ever question Mr. Malone or Mr. Green specifically
5 about that topic?

6 A I didn't. Mr. White may have.

7 Q Did you review any information regarding that topic?

8 A Not prior to this hearing, no. He may have said it to me
9 and I may have asked the question, but I do not recall if that
10 question was posed or answered.

11 Q And the reason I ask these questions, for the relevancy, is
12 that the government is alleging in the indictment that at some
13 point -- and in the plea agreements of Mr. Malone, Green, Barrow,
14 and Espinoza -- that they stopped using JWH-018 and began using
15 AM-2201 in an attempt to circumvent the law. Do you follow me?

16 A Yes.

17 Q Okay. Based on the information you gathered through witness
18 interviews and documents, you know, number one, JWH-018 was never
19 used in Mr. Miyagi, right?

20 MR. WALKER: I would object, Your Honor. That
21 mischaracterizes his prior testimony.

22 THE COURT: He's called under cross. You can handle
23 that question. The objection is overruled.

24 THE WITNESS: I honestly do not recall if that
25 statement was made, if JWH was used. I know JWH was found in

1 some of the products that we recovered, but whether or not they
2 used that -- the industry used -- many of them used JWH and moved
3 to AM-2201. I do know that.

4 BY MR. STANFORD:

5 Q Okay. Well, I'm trying to be very specific. It's not the
6 industry, but these companies and the issues that are before this
7 Court on this motion.

8 A And I don't know.

9 Q So it would be fair to say you have never received any
10 information from anyone that JWH-018 was ever used in Mr. Miyagi.
11 That's a fact, isn't it?

12 A I'm not saying it's not a fact. I'm saying we may have
13 received that information. I just don't recall if we did or not.
14 There were so many interviews conducted, so many individuals we
15 spoke to, I just don't recall.

16 Q Well, Mr. Malone and Mr. Green were the creators of
17 Mr. Miyagi at its inception. They never told you -- more
18 specifically, they did tell you that JWH-018 was never, ever used
19 in Mr. Miyagi. Isn't that a fact?

20 A I don't recall them saying that.

21 MR. STANFORD: At this time, Judge, I would like to
22 offer, file, and introduce the NutraGenomics invoices for
23 Pinnacle Products marked as S-8 into the record.

24 THE COURT: Any objection, Mr. Walker?

25 MR. WALKER: No, Your Honor.

1 THE COURT: Without objection, let it be admitted.

2 BY MR. STANFORD:

3 Q Do you know if any of Drew Green's assets, including money,
4 bank accounts, property, was seized pursuant to this
5 investigation?

6 MR. WALKER: Objection to relevance.

7 MR. STANFORD: That goes to the selective and
8 vindictive portion of my motion, Judge, because it appears that
9 just me and Mr. Domingue are charged with money laundering. And
10 I'm specifically charged with a specific count of forfeiture that
11 I'm going to dive into in more detail a little bit later, but I'm
12 asking this agent, just in overview, does he know whether or not
13 any of Drew Green's bank accounts, personal assets, property,
14 were seized as a result of this investigation.

15 MR. WALKER: And I still submit it's not relevant for
16 this hearing.

17 THE COURT: Well, I see his point, Mr. Walker, on the
18 selective prosecution.

19 But isn't it true, Mr. Stanford, that there is a
20 forfeiture count against Mr. Green?

21 MR. STANFORD: There's a forfeiture count, yes, against
22 everyone, Judge. My question was up to now has anything been
23 seized.

24 THE COURT: All right. And you're familiar with
25 Mr. Green's plea agreement?

1 MR. STANFORD: Right.

2 THE COURT: You've read all of that?

3 MR. STANFORD: Yes, sir.

4 THE COURT: So do we need to ask this question?

5 MR. STANFORD: I just want to have it on the record if
6 this agent knows the answer to that question.

7 THE COURT: All right. I'm going to let him answer it.

8 THE WITNESS: I think Mr. Green agreed to -- I think
9 those assets will be sought by the government.

10 BY MR. STANFORD:

11 Q When you said "agreed to," that Mr. Green is going to do
12 what? He is going to decide what assets he's going to turn over
13 to you at some point in time?

14 A That's between -- that was between the attorneys, the
15 U.S. Attorney and his attorney.

16 Q I'm not asking for you to speculate about that. I'm only
17 asking about what you know specifically because you were involved
18 in debriefings with Mr. Green before he pled and after he pled,
19 right?

20 A Yes.

21 Q Were there any discussions about seizing any of his assets
22 during any of those meetings you had with him?

23 A I'm not sure. I don't know if there were any discussions
24 regarding that. I believe he did have some assets seized. I
25 think there were a number of agencies around the country looking

1 to seize his assets, including the State of West Virginia who
2 filed suit against him. I think at that point most of his assets
3 were hidden I believe is what occurred, so we had to -- and
4 Special Agent Harbourt was looking at those assets, but we fully
5 intend to seize those assets, forfeit those assets.

6 Q Whatever assets you're able to locate?

7 A That's exactly correct. And Mr. Malone. It goes for
8 Mr. Malone as well.

9 Q Did you or any of your agents, the agents working with you
10 in conjunction with this investigation, attempt to seize or
11 freeze any of Mr. Green's or Mr. Malone's bank accounts?

12 A I think the GBI agents had identified some of those bank
13 accounts, and I don't think we -- and Special Agent Harbourt. I
14 don't think there was anything significant in those bank
15 accounts. Again, I think they were basically playing a shell
16 game at that point. They knew that time was limited and there
17 was a nationwide push on this. It was called Operation Log Jam.
18 Many people knew what was going on. Certainly it wasn't
19 created -- Operation Log Jam with all the arrests and all the
20 seizures wasn't created for the purpose of selective prosecution.
21 We, as an agency, this was our big push --

22 THE COURT: All right. Agent DeSalvo, that was a
23 pretty short question calling for a pretty short answer, so I'm
24 going to ask you -- we'll be here for days and days at this rate.

25 The question was, "Did you or any of your agents, the

1 agents working with you in conjunction with this investigation,
2 attempt to seize or freeze any of Mr. Green's or Mr. Malone's
3 bank accounts?" I don't want to know what happened in West
4 Virginia or anywhere else.

5 THE WITNESS: At the time if there were assets to be
6 seized, we would have seized them. We were unable to find or
7 locate assets. We did attempt to.

8 THE COURT: Okay. Next question.

9 MR. STANFORD: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 BY MR. STANFORD:

12 Q Based on reports that I reviewed of your investigation, the
13 only assets seized were actually Preston Ackerman's two bank
14 accounts and one E-Trade account in July of 2012; isn't that
15 true?

16 A Yes.

17 Q For a total of \$227,535.26?

18 A That's correct.

19 Q Has Mr. Ackerman been charged -- he hasn't been charged in
20 this indictment, correct?

21 A Not in this indictment, no.

22 Q Are you aware if he's charged in any other jurisdiction?

23 A I don't know.

24 Q Now, I want to talk to you about some other e-mails between
25 your office and Mr. Malone. Can you read this, Agent DeSalvo, on

1 your monitor? I noticed earlier --

2 A My monitor is not working, no. I can squint.

3 THE COURT: We're putting in a new phone system today,
4 so our IT guys are a little busy, but I'll try to get that taken
5 care of during the break.

6 THE WITNESS: That's fine. It's making me realize I'm
7 older than I wish. Forty-five is when everything goes downhill,
8 I believe.

9 THE COURT: You'd better stop while you're ahead,
10 Agent DeSalvo.

11 MR. STANFORD: I agree with you, Judge. He doesn't
12 have nearly as much gray in his whiskers as you or I.

13 BY MR. STANFORD:

14 Q I'm showing you what is a DEA-6 Report of Investigation for
15 August 20th, 2012. It looks like a proffer of Tommy Malone
16 that occurred at the U.S. Attorney's Office here in Lafayette.
17 Do you recall that event?

18 A Yes.

19 Q And you were present for that meeting with Mr. Malone?

20 A Yes.

21 Q And that was before Mr. Malone was indicted, correct?

22 A Yes.

23 Q And Mr. Malone provided you with minutes from the
24 Coalition for Cognitive Liberty meetings on February 14th,
25 2011, at the Las Vegas -- the Royal Hotel in Las Vegas?

1 A February 14th, 2011, yes.

2 Q Did you turn over those minutes to the U.S. Attorney's
3 Office?

4 A Did I?

5 Q Or your office. And the reason I ask is because we have the
6 DEA-6, but not the actual minutes.

7 A I didn't personally turn it over, no. It could have been
8 turned over, but not by me.

9 Q Now, when you met with Mr. Malone, he told you that
10 February 14th of 2011 in Las Vegas was the CHAMPS convention,
11 correct?

12 A He may have.

13 Q And can you tell the Court what the CHAMPS convention is?

14 A I think the CHAMPS convention is just the industry, the
15 synthetic drug industry, where they sell their -- where they
16 market their goods.

17 THE COURT: Is it C-H-A-M-P-S?

18 THE WITNESS: I think it is.

19 MR. STANFORD: And I'm not sure what it's an acronym
20 for. I've just always heard it referred to as CHAMPS.

21 BY MR. STANFORD:

22 Q When you're talking about the industry, it's basically what
23 we would call head shops for my generation, smoke shops, those
24 types of stores that sell a multitude of products, not merely
25 synthetic cannabis. Would that be accurate?

1 A My understanding is it's the synthetic drug industry, but
2 I've never been to one. Honestly I didn't think it was head
3 shops. I thought it was the -- the videos that I saw, they
4 weren't selling pipes.

5 Q Okay. Now, you also received -- and I'm going to show you
6 on the monitor -- minutes from a December 10th and
7 11th Coalition for Cognitive Liberty meeting, the first meeting
8 that was held in Roswell, Georgia. Do you remember reviewing
9 that as part of your investigation?

10 A I never reviewed that, but Agent White may have.

11 Q And in reviewing the minutes, it appears that it was a
12 two-day meeting, that it was pretty detailed, and there were a
13 number of lawyers involved in that meeting. It appears that they
14 were discussing, for lack of a better word, industry standards,
15 regulations, new laws coming out, so on and so forth. Is that
16 characterization accurate?

17 A That could be.

18 Q Would you take a moment and just look at the -- did I give
19 you a copy of this?

20 A No.

21 MR. WALKER: Your Honor, while he's reviewing it, I'm
22 assuming we're getting to something relevant. I don't see what
23 the relevance of this line of questioning is at all.

24 THE COURT: I'm running with you, Mr. Walker. I'm not
25 sure I see the relevance either, but we'll see what the question

1 is.

2 THE WITNESS: I think I do recall seeing this. I may
3 have glanced at it. I didn't read the whole thing. And I don't
4 know who created this document. I don't know if it's accurate.
5 I mean, it's someone who put together minutes of a meeting. I'm
6 guessing it's an accurate depiction.

7 BY MR. STANFORD:

8 Q And my question is not as to its accuracy, but it appears to
9 depict that there was a two-day meeting where numerous
10 individuals attended, including several lawyers.

11 MR. WALKER: If we could just get to the relevant part.

12 THE COURT: I know what it is now. Go ahead.

13 BY MR. STANFORD:

14 Q And they discussed products, laws, regulations as it relates
15 to -- one thing is specifically synthetic cannabinoids, correct?

16 A Yes.

17 Q There's also references to lab tests, DEA-approved
18 chemicals, and things like that?

19 A Correct.

20 MR. STANFORD: At this point in time, Judge, I would
21 like to offer, file, and introduce these two documents. The
22 first one, the DEA-6, is S-9, and the December minutes is S-10.

23 THE COURT: Any objection, Mr. Walker?

24 MR. WALKER: Apparently you see the relevance that I've
25 missed.

1 THE COURT: Well, let me see if I can articulate what I
2 see the relevance to be. There is an allegation in the
3 superceding indictment that Mr. Stanford had attended a meeting
4 in December of 2011. It is not the clearest -- it's not as clear
5 to me as perhaps it is to others why that is particularly in
6 there, but I suspect his point is there were other meetings and
7 he doesn't think any of those folks are being prosecuted for
8 having attended a meeting.

9 Am I right, Mr. Stanford?

10 MR. STANFORD: You hit the nail on the head, Judge.

11 THE COURT: How about that?

12 MR. WALKER: Then I don't object to the document.

13 THE COURT: Let it be admitted.

14 MR. STANFORD: And the marked copy that I have for
15 introduction, Agent DeSalvo is currently looking at.

16 MR. WALKER: Can you tell me the defense exhibit number
17 on that?

18 MR. STANFORD: The minutes are S-10.

19 THE COURTROOM DEPUTY: S-9.

20 MR. STANFORD: The DEA-6 is S-9.

21 MR. WALKER: And 10 is the minutes?

22 MR. STANFORD: And 10 is the minutes.

23 THE COURT: Mr. Stanford, let me know when we get to a
24 stopping point so I can give Ms. Bourque a break.

25 MR. STANFORD: This would be good.

1 THE COURT: All right. Let's take a ten-minute recess.

2 (RECESS)

3 THE COURT: All right. Court will come to order.

4 Please be seated.

5 Mr. Stanford, you may proceed.

6 MR. STANFORD: Thank you, Your Honor.

7 BY MR. STANFORD:

8 Q Agent DeSalvo, I want to talk to you for a minute about an
9 organization that I'm sure you've heard before called the
10 Coalition for Cognitive Liberty.

11 A Yes.

12 Q And were you aware that Mr. Drew Green was the founder of
13 that organization?

14 A I knew he was a part of the organization. I wasn't clear if
15 he was the founder.

16 Q And we had just a minute ago looked at the minutes from the
17 Coalition for Cognitive Liberty and some e-mails. I'm going to
18 show you what I've marked as S-11 for record purposes which is
19 the entire State of Georgia, Secretary of State, incorporation
20 filing. And if you look on the front page, can you see right
21 over here where it says it was created November 16th, 2010?

22 A Yes.

23 Q And I'm going to turn the page real quickly where it says
24 CEO, CFO, and Secretary, Drew Green.

25 A Yes.

1 Q And I'll turn the page again real quickly. It's just the
2 Certificate of Incorporation.

3 MR. STANFORD: Just for the record to be clear, I'd
4 like to offer, file, and introduce this as S-11.

5 THE COURT: Any objection?

6 MR. WALKER: I object to relevance.

7 THE COURT: Overruled. Let it be admitted.

8 BY MR. STANFORD:

9 Q Now, I'm going to put on the ELMO what I'm going to mark as
10 S-12, which I think is a spreadsheet. Have you seen this
11 spreadsheet before, Agent DeSalvo?

12 A I don't recall. I may have.

13 Q And I believe it was probably prepared by Agent Harbourt.

14 A Okay.

15 Q And it's got a Bates number on it, 38880.

16 MR. WALKER: We don't object to its introduction.

17 MR. STANFORD: And I'd like to offer, file, and
18 introduce that as S-12.

19 THE COURT: Without objection, let it be admitted.

20 Mr. Stanford, can you move it over a little bit so I
21 can see the deposit list, who the deposit is from.

22 MR. STANFORD: The bottom part, Judge?

23 THE COURT: Yes, please.

24 Okay. Thank you.

25 BY MR. STANFORD:

1 Q And there's a second page. This pages shows who checks were
2 issued to. I want to direct your attention to Lipitz, Green,
3 Scime & Cambria, which I believe you've seen some documentation
4 in your investigation that they're a law firm out of Buffalo,
5 New York, who did work for NutraGenomics, the Coalition,
6 Mr. Malone, and Mr. Green.

7 A Yeah. I'll take your word for it. I mean, I recall seeing
8 the name. I don't know if they're out of Buffalo or...

9 Q And here's another check issued to Mr. Don Wirtshafter who
10 is also a lawyer for the Coalition. The first check went to the
11 law firm Lipitz, Green in the sum of \$88,000. The second check
12 to the law firm is -- it looks like it's \$28,000 to
13 Mr. Wirtshafter.

14 A Yes.

15 Q Did you or any of your agents or agents involved in this
16 investigation interview or talk to anybody at the Liptiz, Green
17 firm concerning NutraGenomics or the Coalition?

18 A No, sir.

19 Q How about Mr. Wirtshafter?

20 A No.

21 Q When you spoke with Mr. Malone and Mr. Green in your
22 interviews, they advised you that they had sought and received
23 legal counsel regarding, I guess, the sale and distribution of
24 their products, correct?

25 A Yes.

1 Q And those documents evidence that?

2 A Yes.

3 Q Thank you.

4 The next thing I want to talk to you about is
5 Pinnacle Products and specifically Count 4 of the indictment,
6 which is the money laundering count, alleging that on
7 October 28th, 2011, Pinnacle Products and/or Boyd Barrow paid
8 me a 12,500-dollar retainer. That's kind of a summary of
9 Count 4?

10 A Correct.

11 Q Okay. And that's a 1957 money laundering count.

12 Now, during the course of your investigation of
13 Pinnacle, you discovered that Pinnacle was funneling money to a
14 number of other companies, one of them being Marmalade Skies;
15 isn't that true?

16 A Yes.

17 Q And Marmalade Skies is a company that was operated by
18 Mr. Barrow's wife, Kristen Barrow?

19 A That's correct.

20 Q And I'm going to show you a summary based on the detailed
21 work that -- I would assume that it's Agent Harbourt who prepared
22 this summary as well.

23 A It was.

24 Q And it shows deposits -- if you go down to the bottom -- of
25 \$544,094 all from Pinnacle deposited into Marmalade Skies'

1 Wells Fargo account and the account number is right up here?

2 A Yes.

3 Q Okay. Now, if we go down to the bottom, it shows that on
4 September 12th of 2011, that from the Marmalade Skies account,
5 \$200,000 was transferred to Heritage Bank to pay off Jim and
6 Eva Barrow's mortgage. Do you know who Jim and Eva Barrow are?

7 A I'm assuming Mr. Boyd Barrow's parents.

8 Q Okay. And on that same date, \$188,413 was transferred to
9 PNC Mortgage to pay off Boyd Barrow's mortgage?

10 A Correct.

11 Q And based on this document prepared by Agent Harbourt,
12 there's no question that these monies were generated from
13 Pinnacle funneled into Marmalade Skies and subsequently used to
14 pay off mortgages on two residences?

15 A Correct.

16 MR. STANFORD: Okay. I'd like to offer, file, and
17 introduce this as S-13.

18 MR. WALKER: No objection, Your Honor.

19 THE COURT: Without objection, let it be admitted.

20 BY MR. STANFORD:

21 Q Now, in your investigation, were you aware that after the
22 raid, which is -- I'm using the generic term "raid" for
23 December 8th and I'm not trying to use it in a disparaging way,
24 but after December 8th is it your -- based on your
25 investigation, Mr. Barrow and Mr. Espinoza left Lafayette

1 sometime around December 8th and never returned?

2 A That's correct.

3 Q Now, in your investigation did you learn that on
4 January 3rd, 2012, that Mr. Boyd Barrow and his father,
5 Jim Barrow, opened up a Regions Bank account?

6 A I'm not aware of that.

7 THE COURT: Mr. Stanford, I want to correct the record.
8 Mr. Barrow and Mr. Espinoza both returned to Lafayette after they
9 were indicted.

10 MR. STANFORD: You are right, Judge.

11 THE COURT: Thank you.

12 MR. STANFORD: It was a huge oversight on my part.

13 THE COURT: In conjunction with the legal proceedings.

14 MR. STANFORD: Yes, sir.

15 BY MR. STANFORD:

16 Q I want to show you a platinum account, and that cover page
17 has the Bates number of 045098, and I believe it shows that the
18 account was opened January 3rd, 2012. Does that look about
19 right to you, agent?

20 A That looks correct.

21 MR. WALKER: Have you marked that for identification?

22 MR. STANFORD: Not yet. I can. It's S-14.

23 BY MR. STANFORD:

24 Q And can you see at the top who opened that account?

25 A It looks like Jimmy and Eva Barrow.

1 Q And based on your investigation, you learned or determined
2 that that was Mr. Boyd Barrow's parents. Am I right?

3 A Yes.

4 Q Okay. And it shows that the account was opened up with a
5 275,000-dollar deposit. One was a check for \$150,000 and it
6 looks like there was another deposit for \$125,000 or an initial
7 deposit of \$125,000. Then a subsequent deposit of \$150,000. It
8 looks like \$50,000 at the bottom here and \$100,000. The account
9 was opened up with \$125,000?

10 A Correct.

11 Q Now, in your investigation did you learn that the \$125,000
12 that was initially deposited into this account came from
13 Marmalade Skies?

14 A I did not. It could have.

15 MR. STANFORD: At this time, Judge, I would like to
16 offer, file, and introduce this as S-14.

17 THE COURT: Any objection, Mr. Walker?

18 MR. WALKER: No, Your Honor.

19 THE COURT: Without objection, let it be admitted.

20 BY MR. STANFORD:

21 Q Now, from this account, the S-14 account, I'm going to show
22 you -- it has a Bates number. It's a check. It's Bates
23 Number 45094 and it's a 100,000-dollar check paid to the order of
24 Boyd Barrow. Can you see right over here? Can you read who that
25 check is endorsed to? It says, "Deposit only, Allman & Peters

1 Trust Account."

2 A Okay. I can see that.

3 Q And that would be Mr. Jim Peters, Mr. Barrow's lawyer, in
4 Atlanta, correct?

5 A Yeah. I don't know if -- I assume, yes. I've never seen
6 this before.

7 Q And here is the second page that goes with that attachment
8 showing the routing numbers and that was done on January 6th of
9 2012.

10 MR. STANFORD: And at this time, Judge, I would like to
11 offer, file, and introduce this as S-15.

12 MR. WALKER: No objection.

13 THE COURT: Without objection, let it be admitted.

14 BY MR. STANFORD:

15 Q And I'm going to show you another check from that account
16 which was paid out to Protective Insurance Company FBO on behalf
17 of -- paid to the order of Eva Barrow. Did you learn that this
18 went to buy some type of insurance annuity?

19 A I did not learn that, no.

20 Q Did you know that prior to today?

21 A No. I don't recall ever seeing this. Greg Harbourt with
22 the FBI was conducting the financial investigation.

23 MR. STANFORD: I'm going to mark this as S-16.

24 MR. WALKER: Your Honor, I object to this document
25 based on lack of foundation as well as relevance.

1 THE COURT: Mr. Stanford?

2 MR. STANFORD: Well, Judge, I'm showing that money from
3 Pinnacle was moved from Boyd Barrow to his dad's bank account,
4 and then from there it's being shuffled around to other bank
5 accounts, and as I continue, I will be able to show the Court
6 where the money ends up.

7 MR. WALKER: Again, I don't see the relevance of that,
8 Your Honor.

9 THE COURT: Are you trying to make a money laundering
10 case against Mr. Barrow?

11 MR. STANFORD: Well, Judge, part of my selective
12 prosecution argument is that there are actual money laundering
13 activities going on that the government is aware of between
14 Mr. Barrow and members of his family for a substantial amount of
15 money, probably close to a million dollars.

16 MR. WALKER: Your Honor, that did not happen in this
17 jurisdiction, so we couldn't prosecute it if we wanted to.
18 Beyond that, as the Court is well-aware, we did forfeit the money
19 that we were able to. This Court signed the forfeiture orders
20 forfeiting this money from Mr. Barrow and his family.

21 THE COURT: And it's a consent forfeiture that's in the
22 record, isn't it, Mr. Walker?

23 MR. WALKER: That's correct.

24 THE COURT: All right. I'm going to sustain the
25 objection. I understand your point, Mr. Stanford, but,

1 under 403, at a minimum this isn't relevant.

2 MR. STANFORD: Well, Judge, I'm going to show the agent
3 this check which I meant to introduce earlier in conjunction with
4 the Regions Bank account that was opened by Jim and Eva Barrow on
5 1/3/12 and this is the amount, \$275,000, that was deposited into
6 that account to open it.

7 MR. WALKER: And, again, Your Honor, my objection is
8 he's arguing selective prosecution. We couldn't have prosecuted
9 this as a money laundering --

10 THE COURT: I understand your argument, Mr. Walker.

11 The objection is overruled. You can answer it.

12 THE WITNESS: The question? I'm sorry.

13 THE COURT: The question was -- put the check back up
14 there. You wanted to introduce this earlier when you were
15 talking about the Regions Bank and that document went into
16 evidence, which is why I'm overruling your objection, Mr. Walker,
17 because that document already went into evidence.

18 He wants to know if this check in the amount of
19 \$275,000 was the deposit needed to open that Regions account. Do
20 you remember that other document?

21 THE WITNESS: Yes. That looks like -- I haven't seen
22 this before, but that looks like the check that opened up the
23 account, correct.

24 MR. STANFORD: Thank you.

25 THE COURT: You don't know one way or the other, but

1 that's your best guess, yes?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 BY MR. STANFORD:

5 Q Now, the bank account that I introduced in the record
6 earlier, account number xxxxx9631, that account -- I'll show you
7 what I'm going to mark as S-17. That account was subsequently
8 closed on April 25th and the closing withdrawal was in the
9 amount of \$125,073.11. Can you see that?

10 A Yes.

11 Q And this document bears Bates Number -- that was the Jim and
12 Eva Barrow account -- Bates Number 45108. So that account that
13 we were talking about that was opened up January 3rd is now
14 being closed April 25th, correct?

15 A Yes.

16 MR. STANFORD: And I would like to offer, file, and
17 introduce this document as S-17.

18 THE COURT: And you wanted to admit S-16 as well?

19 MR. STANFORD: Yes, sir.

20 THE COURT: Any objection to either one of those,
21 Mr. Walker?

22 MR. WALKER: No, Your Honor, except if I could get a
23 copy of S-17.

24 MR. STANFORD: Sure.

25 THE COURT: Without objection, let S-16 and S-17 be

1 admitted.

2 BY MR. STANFORD:

3 Q Now, during the course of your investigation, did you learn
4 that a corporation by the name of Seventeen Group was established
5 by Mr. Boyd Barrow through his father, Jim Barrow, on or about
6 April 25th with the help of Mr. Jim Peters, his lawyer?

7 THE COURT: April 25th of what year?

8 MR. STANFORD: April 25th of 2012.

9 THE WITNESS: I'm not aware of that, no.

10 BY MR. STANFORD:

11 Q I'm going to show you what's marked as Bates Number 32442
12 which is the Certificate of Existence for Seventeen Group, LLC.
13 I will mark it as S-18 and turn the page to the fourth page. Let
14 me see if I can zoom in where it shows Seventeen Group, LLC. The
15 registered agent is James Peters at 1820 The Exchange, Suite 400.
16 That would be the same James Peters who is Mr. Boyd Barrow's
17 lawyer in Atlanta; is that correct?

18 A Yes. I've never seen this before.

19 MR. STANFORD: I would like to offer, file, and
20 introduce this as S-18.

21 MR. WALKER: I object to relevance.

22 THE COURT: Let me back up one question. Your answer
23 was, "Yes. I've never seen this before."

24 He just showed you basically articles of incorporation.
25 So do you know that that's Mr. Boyd Barrow's lawyer in Atlanta?

1 THE WITNESS: No.

2 THE COURT: Okay.

3 MR. STANFORD: Well, when you -- I'm sorry.

4 THE WITNESS: I recall Mr. Barrow mentioning a Jim
5 Peters in our interview. I don't recall him saying he was his
6 lawyer. I recall him saying that he knew Mr. Peters or was a
7 family friend or something to that effect, but I've never spoken
8 to Mr. Peters. I've never confirmed he was his attorney. And he
9 may have said it in an interview. I'll be honest with you. I
10 just don't recall. Mr. Barrow, I think, had a number of
11 attorneys.

12 THE COURT: You have no idea what Seventeen Group, LLC,
13 is, what its purpose is, why it was formed, who formed it, any of
14 that?

15 THE WITNESS: I don't.

16 THE COURT: Objection sustained.

17 BY MR. STANFORD:

18 Q Did you discover, during the course of your investigation,
19 that 100,000-dollar check from Allman & Peters, Jim Peters' law
20 firm, was transferred from the trust account to Seventeen Group
21 on April 25th, the date that the Seventeen Group bank account
22 was opened?

23 MR. WALKER: And, again, I object to relevance.

24 THE COURT: Well, Mr. Stanford, I sure don't see it.
25 Do you want to help me with that?

1 MR. STANFORD: Well, Judge --

2 THE COURT: I understand your general theme, but now
3 we're talking about somebody that this witness doesn't know
4 anything about, what his company is, if Mr. Peters makes a
5 transaction. I know where your argument is coming from, but the
6 evidence of what Mr. Peters -- what he was doing for Mr. Barrow,
7 we don't have any of that and this witness can't testify about
8 any of that.

9 MR. STANFORD: Yes, sir. I'll move on, Judge.

10 THE COURT: All right. Objection sustained.

11 MR. STANFORD: And the only caveat, Judge, the
12 relevance is that Count 4 is a money laundering count, and based
13 on this evidence, to me it evidences what would truly be money
14 laundering but is not charged or taken into account by the
15 government.

16 THE COURT: And probably the U.S. Attorney in Georgia
17 would be able to answer that question for us, but the
18 U.S. Attorney in Georgia is not here, and the U.S. Attorney here
19 is the one that's being charged for prosecutorial misconduct in
20 your motion.

21 MR. STANFORD: Yes, Judge, I understand, but from what
22 I understand, they are charging defendants in Georgia, Mr. Malone
23 and Mr. Green, and certainly Mr. Reece who was in Florida who had
24 no connection or had never been to Louisiana, but yet this
25 U.S. Attorney's Office exercised jurisdiction over those

1 individuals.

2 And surely if this is all part of a scheme, which it
3 appears that Mr. Barrow is funneling money through family
4 accounts and creating corporations to hide money that was derived
5 from Pinnacle which is the subject of this indictment, then this
6 U.S. Attorney's Office would in fact have jurisdiction over those
7 matters.

8 MR. WALKER: Your Honor, respectfully, the law for
9 money laundering counts is you can charge them in the place where
10 the transaction occurred, so they could be charged if -- I don't
11 know anything about the facts of Seventeen. It's not a subject
12 of our investigation. This is the first time I've heard of it.
13 Assuming that it is money laundering, which is a huge assumption,
14 it could be charged in Georgia.

15 THE COURT: There would be no venue here is what you're
16 telling me?

17 MR. WALKER: That is correct.

18 MR. STANFORD: Judge, I disagree. Under 1956(h), which
19 is the money laundering conspiracy, this office has just as much
20 venue to charge the money laundering conspiracy as it does to
21 charge a drug conspiracy or misbranding conspiracy.

22 THE COURT: So you're saying that would just be an
23 overt act?

24 MR. STANFORD: Yes, sir.

25 THE COURT: You don't need to nod your head,

1 Mr. Foster. I can make my own answers.

2 All right. Move on, Mr. Stanford. I see your point.

3 MR. STANFORD: Thank you, Judge.

4 BY MR. STANFORD:

5 Q Now, Agent DeSalvo, in this indictment and in your previous
6 testimony, you referenced and brought up the Retail Compliance
7 Association?

8 A Yes.

9 Q So I'm going to ask you some questions about that
10 organization. Okay?

11 THE COURT: Mr. Stanford, there are two Retail
12 Compliance Associations in this case. There's what I'm going to
13 call the national one that we talked about in the *Garcia* hearing
14 and the one that was incorporated as an LLC in Louisiana. So
15 when you reference them, would you please be specific as to which
16 one you're talking about.

17 MR. STANFORD: I will do that, Judge.

18 THE COURT: Thank you.

19 BY MR. STANFORD:

20 Q Now, let's talk about the national RCA. Do you know when
21 the national RCA was formed?

22 A I do not.

23 Q Do you know who formed the national RCA?

24 A I believe Dan Francis.

25 Q And what do you base that assumption on?

1 A Information received in interviews.

2 Q Did you do a documents check? Did you verify that in any
3 way?

4 A Possibly. I just don't recall what the documents stated.

5 Q Do you know about when Mr. Francis may have incorporated the
6 national RCA?

7 A I do not know. Maybe 2010, but that's a guess.

8 Q Now, the national RCA, as far as your investigation
9 revealed, would you tell the Court what you -- or summarize what
10 the national RCA's purpose was and/or what it did?

11 MR. WALKER: Objection to relevance.

12 THE COURT: Overruled.

13 THE WITNESS: The national RCA -- that's a pretty broad
14 question. I'm trying to recall.

15 BY MR. STANFORD:

16 Q But was it -- if I can, I don't want to put you on the spot,
17 but did you testify previously that the national RCA was involved
18 in lobbying efforts?

19 A Yes, yes. Thank you.

20 THE COURT: Pull your microphone down, Mr. Stanford.

21 THE WITNESS: Yes. They were involved in lobbying
22 efforts, provided information to smoke shops and retailers on
23 ways to circumvent the laws. They were a proponent of what they
24 termed "sensible adult legislation" which the analogy would be
25 for sort of the legalization of marijuana. What they wanted was

1 they wanted their retailers to be able to sell the product and
2 have it regulated.

3 BY MR. STANFORD:

4 Q Okay. You threw in real quick that the national RCA was
5 trying to assist individuals in circumventing the law.

6 A Well, again, I'm going back to 2010. At some point in time
7 the national RCA -- based on our investigation, the intent was to
8 fold the national RCA and be one RCA which was going to be here
9 in Louisiana, based here in Louisiana.

10 So Mr. Francis and yourself, I believe, based on our
11 investigation, were going to start the RCA and have only one RCA.
12 What happened in 2010 to brainchild how it started, I don't know.
13 I'm just going from the documents that I've seen.

14 BY MR. STANFORD:

15 Q I'll try to ask some specific questions so that we can
16 narrow the focus. You were aware, based on your investigation,
17 that Dan Francis who founded the national RCA was actually
18 involved in lobbying efforts in Washington, D.C., on
19 Capitol Hill, correct?

20 A I don't know if that -- I don't know that for a fact.
21 That's what I was told.

22 Q Well, have you -- you've seen correspondence between
23 Mr. Francis and various senate committees that were basically
24 working on the legislation that later was passed in July of 2012
25 called the synthetic, I guess, cannabis law, H.R. 1254?

1 A The correspondence in which you're speaking of is a letter
2 which doesn't show any type of official seal. It's something
3 that is entitled "Testimony." Honestly I don't know if he ever
4 testified in front of Congress. That's what he was stating. I
5 never was able to confirm that. I did see a letter that stated
6 testimony of Dan Francis.

7 Q And also I saw in the discovery you addressed a specific
8 e-mail to AUSA Collin Sims referring to one of Mr. Francis'
9 briefs, a May 9th brief that he submitted to Congress regarding
10 legislation of synthetic cannabis, correct?

11 A Yes. My understanding is it was a letter to -- or it was in
12 lieu of testimony to the subcommittee. This was his statement,
13 his formal statement or whatever, but I never confirmed that
14 actually was received by Congress or anything like that. It was,
15 I believe, taken from his website.

16 MR. STANFORD: On my exhibits I'm at S --

17 THE COURTROOM DEPUTY: Seventeen.

18 MR. WALKER: I don't think that's correct.

19 MR. STANFORD: I thought I was up to 19.

20 THE COURTROOM DEPUTY: Well, I don't have 18 or 19.

21 MR. WALKER: We're definitely up to 18 because that's
22 the document I'm holding.

23 THE COURTROOM DEPUTY: I don't have 18 or 19.

24 MR. HIPWELL: Eighteen was marked but not admitted.

25 THE COURTROOM DEPUTY: I don't have anything.

1 MR. STANFORD: I think that's where the Court cut me
2 off on the checks, and so I'll mark this as S --

3 THE COURTROOM DEPUTY: Eighteen.

4 MR. STANFORD: -- 18.

5 BY MR. STANFORD:

6 Q And I'll give you a copy of this, Agent DeSalvo. And in
7 conjunction with that e-mail, I'm going to also show you this.

8 In your e-mail you are referencing this brief by
9 Mr. Francis, which on the cover -- and I understand you haven't
10 confirmed where it went, but on the cover it has "Submitted to
11 Senate and Congress on May 9th."

12 A Yes. And it looks like something he put together and
13 provided to his customers because his phone number is on the
14 bottom of the document.

15 Q Okay. If you'd turn to the second page of that document
16 which I'm going to refer to as S-19. Your e-mail is S-18. He
17 begins the top paragraph with a statement by Mr. Joseph
18 Rannazzissi, Deputy Assistant Administrator of the Office of
19 Diversion Control, DEA?

20 A Yes.

21 Q And based on reading your e-mail, it appears that you read
22 Mr. Francis' brief and were e-mailing Mr. Sims and cc'ing other
23 individuals and somehow believed that this brief implicated
24 Mr. Francis in misbranding.

25 A Okay.

1 Q Could you explain that to the Court why you think this brief
2 would implicate anyone in misbranding?

3 A Well, I mean, I'd have to read this entire thing. Again, I
4 haven't memorized it.

5 Q Well, I can summarize it for you. He talks about what a
6 cannabinoid is and basically goes into talking about how
7 prohibition is ineffective and discusses ways to regulate it, to
8 tax it, to generate industries, to prevent -- I mean, to generate
9 revenues, to prevent those revenues from going underground.

10 He's actually advocating that whatever is contained in
11 the product be listed on the label and that it could be
12 scrutinized by the FDA and the DEA. It would prevent counterfeit
13 materials from entering the market. He's proposing a minimum
14 purchase age of 21.

15 That's pretty much the focus of this brief. And I read
16 it and I read your e-mail. I don't see where in his brief he is
17 discussing anything to do with misbranding as you suggest.

18 MR. WALKER: And, Your Honor, I object.

19 THE COURT: Wait a minute. He hasn't asked the
20 question yet. Is there a question on the table?

21 BY MR. STANFORD:

22 Q The question is, do you consider it misbranding if someone
23 is advocating legislation, legalization, regulation, taxation,
24 and controlling the product and actually having a label that
25 contains exactly what's in the product on the product? Would you

1 consider that to be mislabeling?

2 A No, but he was --

3 THE COURT: Wait.

4 MR. WALKER: My objection is he's mischaracterizing
5 Don DeSalvo's e-mail. In fact, he is saying it's saying exactly
6 the opposite of what it says. So that would be my objection.
7 He's mischaracterizing the e-mail.

8 MR. STANFORD: Agent DeSalvo --

9 THE COURT: Wait, wait, wait. The objection is
10 overruled.

11 Do you understand the question that he's asked you?

12 THE WITNESS: Yes.

13 THE COURT: Okay. You can answer it.

14 THE WITNESS: Based on what you said, he's doing the
15 opposite. They are selling it. They are mislabeling the
16 product. They're not labeling it properly. They're not putting
17 the ingredients. They're not putting that it's potentially
18 harmful. And the packages themselves are to entice younger
19 crowds who go in there and believe that it's safe. I would say
20 that's mislabeling.

21 BY MR. STANFORD:

22 Q Okay. Well, I appreciate your answer and that's what I
23 actually want to discuss. Okay?

24 Now, the national RCA is not a retailer, distributor,
25 doesn't sell any products, does it?

1 A No.

2 Q And when you read Mr. Francis' brief, he is not advocating
3 or he's not putting himself out there as a seller of products,
4 but basically a supplier of information and suggestions to
5 Congress on how this industry can be regulated, taxed, and run?

6 A No. He's also teaching retailers how to do this without
7 doing what he really wants to do which is to sell it and regulate
8 it. However, the government did not regulate it, so he's telling
9 them this is what you do in order to outfox the government.

10 Q Well, this brief is addressed to the Senate and Congress on
11 May 9th. So are you saying he is telling the Senate and
12 Congress how to outfox the government?

13 A No. But he's telling retailers --

14 Q We're talking about these documents.

15 A Yes. But you asked me as a whole what was the point.

16 Q No, I didn't.

17 THE COURT: Whoa, whoa, whoa. Now you're getting
18 argumentative.

19 MR. STANFORD: I apologize, Judge. I want to stick to
20 this.

21 THE COURT: I want one specific question and one
22 specific answer, we don't argue, and keeping in mind the purpose
23 of why we're here.

24 MR. STANFORD: Yes, sir.

25 BY MR. STANFORD:

1 Q Based on your review of this document, this document and
2 your e-mail, this document in and of itself does not evidence
3 misbranding, does it?

4 A I think it proves evidence of misbranding, yes. I think
5 this document helps prove our case.

6 Q Is there any -- I didn't read anywhere in this document
7 where he is advocating for mislabeling or misstating what's in
8 the product. Your e-mail says, "They want to brand it
9 appropriately but can't."

10 MR. WALKER: And respectfully, Your Honor, I object.
11 This goes far beyond the motion to dismiss.

12 THE COURT: I agree. Sustained. And it's
13 argumentative.

14 MR. STANFORD: I would like to offer, file, and
15 introduce S-18 and S-19 which is the e-mail and the --

16 MR. WALKER: It's irrelevant for the purpose of this
17 motion. I would object.

18 THE COURT: Objection overruled. Let it be admitted.
19 And, for the record, the relevance is once again based
20 on the selective prosecution, Mr. Stanford, which is curious to
21 me because Mr. Francis has been indicted on the exact same count.

22 MR. WALKER: And that was my objection, Your Honor. I
23 don't know how it can be selective if he's been indicted, too.

24 THE COURT: That's what I said, Mr. Walker.

25 MR. STANFORD: Well, Judge --

1 THE COURT: That's okay, Mr. Stanford. You won. And
2 those documents were attached to the brief already and I had
3 already read them.

4 BY MR. STANFORD:

5 Q So my question concerning the national RCA is, lobbying as
6 Mr. Francis did is not illegal, is it?

7 A Lobbying, no, it isn't. There are lobbyists for
8 legalization of marijuana.

9 Q And writing letters to Congress or publishing information on
10 his website is not illegal, is it?

11 A Not necessarily.

12 Q Well --

13 A I think he took some money on his website. That could be
14 potentially illegal.

15 Q I'm only -- let's talk about the information, the content of
16 the website and the content of Mr. Francis' information.

17 MR. WALKER: And, again, Your Honor, I object to
18 relevance.

19 THE COURT: Mr. Stanford?

20 MR. STANFORD: Well, Judge, he's using as a predicate
21 that the Louisiana RCA that was founded on November 28th is --
22 that somehow the actual creating it makes it a rogue organization
23 simply because it's attached to or has some connection to the
24 national RCA, so I'm trying to find out what is the basis for
25 that.

1 MR. WALKER: That is absolutely inaccurate. We didn't
2 say the fact of the existence of RCA makes it illegal. We have
3 charged, based on the actions of the defendants, that what they
4 did sometimes in connection with the RCA were in fact illegal.

5 THE COURT: This is the reference to the indictment on
6 page 3, section 1 of Count 1, paragraph H. "Retail Compliance
7 Association (RCA) was incorporated in Louisiana by Daniel James
8 Stanford. RCA's Articles of Incorporation list Daniel James
9 Stanford as the director and Daniel Paul Francis as the
10 president. Through the RCA, Daniel James Stanford and
11 Daniel Paul Francis trained, advised, and instructed the
12 individual franchise owners of Curious Goods, LLC, and their
13 employees, on how to store, display, and sell the Mr. Miyagi
14 products, how to detect and evade law enforcement, and how to
15 respond to customers who ask questions about how to use the
16 Mr. Miyagi products and/or the physiological effects of
17 Mr. Miyagi products."

18 There is nothing that I am aware of in the remainder of
19 this indictment that mentions anything about the national RCA or
20 how it is related to the Louisiana RCA, so Mr. Walker's objection
21 is well-taken and it is sustained.

22 MR. STANFORD: I will therefore restrict my questions
23 to the Louisiana RCA, Judge.

24 THE COURT: Thank you.

25 BY MR. STANFORD:

1 Q Based on your investigation, you learned that the
2 Louisiana RCA was incorporated November 28th, 2011, correct?

3 A That's when it was incorporated, but it was in effect prior
4 to that.

5 Q And when you say it was in effect, what do you mean by that?

6 A RCA was collecting dues prior to that, RCA dues, which were
7 profits from the retailers.

8 Q Who were dues collected from?

9 A Several individuals. Off the top of my head, I believe
10 Josh Espinoza, Boyd Barrow, probably Richard Buswell possibly.

11 MR. STANFORD: Just for the record to be complete,
12 Judge, this record to be complete, I'd like to offer, file, and
13 introduce the Articles of Incorporation for the Retail
14 Compliance -- Louisiana Retail Compliance Association.

15 MR. WALKER: No objection.

16 THE COURT: Without objection, let it be admitted.

17 MR. STANFORD: And that's S --

18 THE COURTROOM DEPUTY: Twenty.

19 MR. STANFORD: -- 20.

20 BY MR. STANFORD:

21 Q Now, I'm going to show you the fourth page of this document
22 which shows that it was incorporated as a nonprofit organization.
23 Is that accurate?

24 A I certainly don't think it was nonprofit.

25 Q Well --

1 THE COURT: That's not what he asked you,
2 Agent DeSalvo. He asked you what the document says.

3 THE WITNESS: Yeah. It may be incorporated as a
4 nonprofit.

5 THE COURT: The document says, "This corporation is a
6 nonprofit corporation," right?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay. Thank you.

9 BY MR. STANFORD:

10 Q Did you see any checks written by anyone to the
11 Louisiana Retail Compliance Association at any time?

12 A Yes.

13 Q Okay. You saw checks that were written to the
14 Retail Compliance Association?

15 A They were written to Daniel Stanford.

16 Q That's not my question. Were they written to the
17 Retail Compliance Association?

18 A Well, let me -- what I saw was the checks were styled as RCA
19 dues. They were written to a person, but they were styled a
20 certain way.

21 Q When you say "styled," you're talking about what is in the
22 memo section of somebody's check, correct?

23 A Correct.

24 Q That the writer of the check can write in the memo column
25 whatever they want to write in reference to their check, correct?

1 A Correct.

2 Q But none of those checks were written to the
3 Retail Compliance Association. Isn't that a fact?

4 A That's correct.

5 Q Okay. Now, let's talk about from November 28th forward.

6 What actions, if any, did the Louisiana Retail
7 Compliance Association take or what conduct did they perform that
8 was illegal?

9 A They --

10 MR. WALKER: I would object, Your Honor. The basis of
11 my objection is this. We didn't charge that the
12 Retail -- the Retail Compliance Association is an organization.
13 We charged Daniel Stanford and others using the Retail Compliance
14 Association to engage in activities.

15 So if his question is what did the Retail Compliance
16 Association itself do that was illegal, it's not something that's
17 been -- it's not a part of the indictment other than the fact
18 that it lists out the day created, which has been verified.
19 Anything else for that organization is not relevant.

20 MR. STANFORD: The first thing, Judge, is it's a
21 predicate to the next question, does he know of any action that
22 the organization took. In this indictment, Curious Goods, the
23 organization, is charged as a defendant. I understand the
24 Louisiana RCA is not, but as a predicate question I want to know
25 if this agent has any information that the actual organization,

1 the RCA, Louisiana RCA, did anything to -- took any action as an
2 organization that he could determine to be illegal.

3 THE COURT: I tend to agree with Mr. Walker, but I'm
4 going to let him answer the question.

5 Do you know anything the organization did?

6 THE WITNESS: I know just what individuals in the
7 organization did, the actual organization. After
8 November 28th -- prior to that there were some checks received.
9 After November 28th there was a meeting held at Mr. Richard
10 Buswell's home in which individuals were trained, I believe,
11 based on the information we received, on how to sell the product
12 without being arrested.

13 BY MR. STANFORD:

14 Q Okay. So the Louisiana RCA, if I'm understanding you, the
15 organization didn't do anything illegal. It's the individuals,
16 meaning -- you're talking I did something illegal through the
17 organization?

18 A Who represented themselves to be part of the RCA.

19 Q Well, let's break this down.

20 Prior to November 28th, as alleged in the indictment,
21 I want you to tell me specifically, first of all, which
22 individual franchise owners of Curious Goods that I trained,
23 advised, and instructed, along with their employees, on how to
24 store and display Mr. Miyagi products?

25 MR. WALKER: And I object.

1 THE COURT: Sustained.

2 BY MR. STANFORD:

3 Q Do you have any information that I did any of these overt
4 acts prior to November 28th?

5 MR. WALKER: Again, I object to relevance for this
6 motion.

7 THE COURT: That's sustained.

8 Mr. Stanford, this isn't a discovery expedition.
9 Unless you can tell me how that's relevant to your motion, I
10 don't see it. What it is to me is it's a discovery expedition.

11 Now, if you're telling me the government created some
12 kind of misconduct by hiding information from you, then I don't
13 know about it and I need to hear about it. It wasn't in your
14 brief.

15 MR. STANFORD: Judge, that kind of goes to the heart of
16 my brief, the fact that I don't know what conduct they're talking
17 about.

18 THE COURT: I have that as another motion that's before
19 me that I intend to rule on very, very shortly.

20 MR. STANFORD: And I was merely asking the agent to
21 clarify did this conduct -- he seemed to indicate earlier that
22 this conduct occurred at a specific time and a specific place,
23 basically December 7th at Richard Buswell's house. So I'm
24 asking him to clarify is this conduct that you're talking about,
25 did any of it occur before November 28th. I think his answer

1 would be no, but I just want a clarification and ask him if he's
2 talking about December 7th.

3 THE COURT: You can answer that question.

4 THE WITNESS: There were -- after December 8th --

5 BY MR. STANFORD:

6 Q The first part of the question is, before
7 November 28th did any of this conduct occur?

8 A Yes. I think we charged that. I think there were some RCA
9 dues received.

10 Q We're not talking about dues. We're talking about conduct,
11 training, advising, instructing, that conduct. Did any of that
12 occur before --

13 A Yes. I believe that you were part of the organization that
14 assisted these individuals and this is based on a number of
15 interviews. I don't have access to all of this information. I
16 formed an investigation -- or we formed an investigation based on
17 more than one instance. I stand by what we charged in the
18 indictment.

19 Q Well, then if you've developed information consistent with
20 what's charged in the indictment, the government should have that
21 information, correct?

22 A I mean, it's based on what we plan to present in trial.

23 Q And if I'm --

24 THE COURT: Whoa. I want the answer to that last
25 question. He says, "If you've developed information consistent

1 with what's charged in the indictment, the government should have
2 that information, correct?"

3 THE WITNESS: Yes.

4 THE COURT: Okay. Next question.

5 MR. STANFORD: Thank you, Judge.

6 BY MR. STANFORD:

7 Q And are you telling the Court that this information consists
8 of witness interviews that you took?

9 A Some.

10 Q And other than witness interviews, is there any hard
11 evidence --

12 MR. WALKER: And I object, Your Honor.

13 THE COURT: Let him finish.

14 BY MR. STANFORD:

15 Q When I say "hard evidence," documents that I created that
16 would evidence any kind of conduct that's alleged in paragraph H?

17 MR. WALKER: And I object.

18 THE COURT: Overruled.

19 THE WITNESS: Yes.

20 BY MR. STANFORD:

21 Q Documents that I created?

22 A Not documents, but there's information that -- there's a
23 document based on information you gave to the retailers.

24 Q I don't understand. There's a document?

25 A There's a written document based on a recording that one of

1 the retailers made of you giving information and advice to these
2 retailers.

3 Q You're talking about handwritten notes from the
4 December 7th meeting?

5 A No, not December 7th. I'm talking about in January.

6 Q Okay. So --

7 A In that recording you make reference to what you did in the
8 past for these individuals, you speaking, hey, this is what we're
9 doing moving forward, and then you go into describing what your
10 duties were or what you were doing in the past for this
11 organization.

12 Q Okay. So the answer is there's no documents, that it's a
13 statement that I made to someone else that's recorded?

14 A That's correct.

15 Q Okay. Now, at the December 7th meeting, did I
16 specifically train anyone or advise anyone at that meeting?

17 A Dan Francis did.

18 Q Did I specifically tell anyone how to detect and evade law
19 enforcement?

20 A Dan Francis did.

21 Q Now, you made reference in the *Garcia* hearing that somehow a
22 December 6th check that I wrote to Dan Francis for contract
23 consulting connects whatever Dan Francis did to me. Is that
24 accurate?

25 A I think it said RCA contract consulting. I think it was the

1 day before the meeting.

2 Q Right.

3 A Yes.

4 Q Are you saying that that check in and of itself evidences
5 wrongdoing on my part?

6 THE COURT: Sustained.

7 MR. WALKER: Thank you.

8 BY MR. STANFORD:

9 Q At the *Garcia* hearing you specifically testified to the fact
10 that that December 6th check showed some type of connection
11 between whatever Dan Francis may have said and me. Do you
12 remember saying that?

13 A Well, you were part of the same organization.

14 THE COURT: No. The question was, "Do you remember
15 saying that?"

16 THE WITNESS: Yes, I do.

17 THE COURT: Okay.

18 BY MR. STANFORD:

19 Q Okay. Now, do you know what a contract consultant is?

20 MR. WALKER: Again, Your Honor, at this point I object.
21 It goes beyond the motion.

22 THE COURT: I agree.

23 Are you suggesting that something that he said at the
24 *Garcia* hearing regarding that is untrue, Mr. Stanford?

25 MR. STANFORD: Yes, Your Honor.

1 THE COURT: All right. You can answer the question.

2 THE WITNESS: Repeat the question.

3 THE COURT: Do you know what a contract consultant is?

4 THE WITNESS: You pay someone to consult.

5 BY MR. STANFORD:

6 Q A contractor is independent of the person who's paying him.

7 Isn't that true?

8 A Not based on the information we received. We received
9 information that you were collecting all the fees for the RCA and
10 then you would pay Dan Francis certain amounts. You were in
11 charge of the RCA, the new RCA, the Louisiana which was now
12 folded into the old RCA -- or from the old RCA. That's the
13 information we received.

14 Q And I'm assuming once you received this information, you
15 attempted to corroborate it, correct?

16 A I'm sure we did.

17 Q Okay. Was there ever an RCA bank account?

18 A No.

19 Q Did I ever write any RCA checks?

20 A No.

21 Q And the checks that you referenced that were written out to
22 me were deposited in my accounts and were payment directly to me,
23 correct?

24 A With some saying RCA dues, correct.

25 Q And there's no showing in the record or in the documents

1 that those funds somehow found their way back to the RCA,
2 correct?

3 MR. WALKER: The RCA is a corporation. I'm not -- I
4 object to the form of the question.

5 MR. STANFORD: I'll rephrase it.

6 THE COURT: It's overruled.

7 Can you answer that?

8 THE WITNESS: I'll try.

9 THE COURT: If you don't understand it, ask him to
10 rephrase it.

11 THE WITNESS: Yeah. If you're in charge of the RCA and
12 you're receiving the money, I would say it's the same thing.

13 BY MR. STANFORD:

14 Q Okay. You would say. Now, first of all, what evidence do
15 you have to show that I'm in charge of the Louisiana RCA?

16 A You're listed as the --

17 Q Director?

18 A -- director.

19 Q And who's listed as the president?

20 A Dan Francis.

21 Q But my question was -- your, I guess, proof is the fact that
22 people wrote checks to me individually, but in the memo section
23 referenced RCA dues. My question specifically to you is, do you
24 have any evidence that that money, those checks, or the money
25 from those checks somehow went back to either the Louisiana RCA

1 or to Dan Francis individually?

2 A Other than the check that you wrote as a consultant?

3 Q Right.

4 A I think that was the only check that I saw.

5 Q Okay. You don't have any information, do you, in your
6 investigation that either I or Dan Francis spoke with any
7 franchise owners ever about dues?

8 MR. WALKER: Again, Your Honor, I object. I don't see
9 the relevance of it.

10 MR. STANFORD: Judge, he is --

11 THE COURT: Wait, wait, wait. Overruled.

12 You can answer it.

13 THE WITNESS: It was represented by a number of
14 individuals that the retailers were to pay a portion of the
15 profits from their stores to the RCA, and these -- the two
16 individuals that were -- from what I recall, the two individuals
17 that were presented as members of the RCA were you and
18 Dan Francis at the meeting.

19 BY MR. STANFORD:

20 Q Okay. Let's discuss that. My question was, have I or
21 Dan Francis ever talked or directed any franchise owner about
22 dues? You don't have any evidence of that, do you?

23 A Yes, we do.

24 Q Okay. That we spoke directly to a franchise owner?

25 A To Boyd Barrow; not a franchise owner, but to Boyd Barrow.

1 Q Okay. My question is to a franchise owner.

2 A Richard Buswell is the one who did that, not you.

3 Richard Buswell did speak to the franchise owners and told them
4 they would be paying these dues.

5 Q And, according to you, Richard Buswell has nothing to do
6 with the RCA if I'm the head of it, right?

7 A This was a pretty well commingled group of individuals and
8 businesses. One relies on the other. In my opinion one relies
9 on the other to move forward.

10 THE COURT: I have a question, Agent DeSalvo. Was
11 Richard Buswell a franchise owner?

12 THE WITNESS: Yes, he was.

13 BY MR. STANFORD:

14 Q Which franchise did Richard Buswell own? Wasn't Richard
15 Buswell the owner of the corporate stores, the northside store
16 and the Kaliste Saloom store?

17 A I would consider that an owner of one of the stores.

18 THE COURT: That's why I was asking, but I didn't
19 remember which it was. There wasn't anything loaded about my
20 question, Mr. Stanford.

21 MR. STANFORD: Thank you, Your Honor, but there's
22 a distinction between the corporate store that sells
23 franchises and the franchise stores that buys them.

24 THE COURT: That's why I asked. I didn't
25 remember.

1 BY MR. STANFORD:

2 Q So the two are separate and distinct; isn't that right,
3 Agent DeSalvo?

4 A Yes, but they sell the same products.

5 Q I understand that, but there's the corporate store and the
6 franchise stores. Getting back to my original question. I never
7 had a conversation nor did Dan Francis with any franchise owners
8 about dues. Isn't that true?

9 A As far as I know, not you personally. Individuals were told
10 they would have to pay RCA dues.

11 Q Well, my question is either me or Dan Francis, we never had
12 any --

13 MR. WALKER: I would object. It's been asked and
14 answered about three times.

15 THE COURT: Move on, Mr. Stanford.

16 BY MR. STANFORD:

17 Q You don't have any evidence that any franchise owners ever
18 wrote a check to me, do you?

19 A Not yet because the raids occurred the day after they were
20 told they would have to pay.

21 Q And you're saying that they were told this by
22 Richard Buswell?

23 A I believe it was Richard Buswell, yes.

24 Q And do you remember testifying at the *Garcia* hearing that
25 you said, based on your information, the franchise owners had no

1 option, that they had to do it, correct?

2 A That's correct.

3 Q And do you remember I pointed out to you and I asked you had
4 you read the franchise agreement. Do you remember that question?

5 A Yes.

6 Q Have you read the franchise agreement?

7 A Yes.

8 Q Does the franchise agreement itself allow the corporate
9 store to order a franchisee to join any third party organization
10 and pay any type of dues or fees?

11 A Regardless of whether or not it does, that's what they were
12 told, and that's what Richard Buswell told me as well.

13 THE COURT: Please answer his question.

14 BY MR. STANFORD:

15 Q The franchise agreement does not allow the corporate store
16 to do that, does it?

17 A Honestly, I've read some over the franchise agreement.
18 There may be some legal wiggle room that I'm not aware of because
19 I'm not an attorney. Generally I read over it and I'll take you
20 for your word on that.

21 THE COURT: Well, Agent DeSalvo, let me just make it
22 easy for you. If the answer is I don't know, the answer is I
23 don't know.

24 THE WITNESS: I don't know.

25 THE COURT: There you go.

1 BY MR. STANFORD:

2 Q Okay. You did testify at the Grand Jury, correct?

3 A Yes.

4 Q More than once?

5 A Yes.

6 Q And you did testify regarding the RCA dues and my role in
7 the Louisiana RCA; isn't that correct?

8 MR. WALKER: I object, Your Honor. He hasn't put
9 forward anything to demonstrate that -- one, the Court has the
10 Grand Jury testimony which you've been given for in camera
11 review. Unless he's submitting something to demonstrate that he
12 testified falsely in front of the Grand Jury, which he has not
13 done so far, now he's simply trying to find out what things were
14 testified and I don't think that's appropriate.

15 MR. STANFORD: Judge, I'm asking a general question.
16 How can I compare one thing to another unless I first establish
17 that he did testify at the Grand Jury and he did testify about
18 this topic and these issues that we're now discussing?

19 THE COURT: It is one of the problems inherent in the
20 6(e)(3)(E)(ii) dilemma.

21 Have you got that, LaRae?

22 So we're just going to call it 6(e)(3)(E)(ii) from here
23 on out.

24 MR. STANFORD: Well, Judge, I'm not --

25 THE COURT: Hang on. I want to rule on his objection.

1 You can answer carefully the question that he asked.
2 He asked, "Did you testify regarding the RCA dues and my role in
3 the RCA to the Grand Jury?" Did you do that?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Next question. I'm not going to let
6 you go very far because I can't, Mr. Stanford. That's what the
7 law is. I'm not saying whether it's fair or not. I don't
8 understand how it ended up that way, but it's that way.

9 MR. STANFORD: Okay, Judge.

10 BY MR. STANFORD:

11 Q Now, let's talk about your testimony at the *Garcia* hearing.
12 At the *Garcia* hearing you testified under oath that -- or made it
13 appear that these franchise owners had no choice, that they were
14 given a directive that they had to follow as far as paying dues;
15 isn't that right?

16 A That's correct.

17 Q And at the *Garcia* hearing I pointed out to you that the
18 franchise agreement in and of itself, a contract between the
19 corporate store and the franchise owners, would not allow for
20 that. Didn't that happen?

21 A Yes.

22 Q Prior to testifying before the Grand Jury, did you read the
23 franchise agreement for yourself to determine for yourself
24 whether or not what I was telling you then is in fact correct?

25 A Can I answer?

1 THE COURT: Yes.

2 THE WITNESS: Just because there's a franchise
3 agreement doesn't mean that they weren't told, and the
4 individuals advised me, that I spoke to, some of the franchise
5 owners and Richard Buswell, that they had no choice in the
6 matter. Regardless of what the contract said, that's what we
7 were advised.

8 THE COURT: Okay. I'm going to cut you off. I've
9 heard that I think about eight or nine times now. He asked a
10 very specific question and he's asking it for a very specific
11 reason.

12 The question was, prior to testifying before the Grand
13 Jury, did you read the franchise agreement for yourself to
14 determine for yourself whether or not what he, Mr. Stanford, was
15 telling you at the *Garcia* is in fact correct, so this is a yes or
16 no. Did you read it?

17 THE WITNESS: I didn't read the entire thing.

18 THE COURT: Okay. Next question.

19 MR. STANFORD: Thank you, Judge.

20 BY MR. STANFORD:

21 Q So is it your understanding that just because someone makes
22 a general statement that may be legally enforceable, that it has
23 effect just because you believe that it has effect? Is that your
24 position on this issue?

25 MR. WALKER: I object, Your Honor. He's trying to get

1 this witness to give a legal conclusion and I don't think that's
2 appropriate.

3 MR. STANFORD: Not really, Judge. I would think that
4 prior to testifying about a significant matter, he would read the
5 document that was brought to his attention and try to understand
6 the document to determine, number one, whether or not what he is
7 presupposing could even in fact be possible.

8 THE COURT: Well, no, Mr. Stanford, I don't agree.
9 What he has said over and over is that witnesses said that they
10 were told that they had no choice but to pay these RCA dues.

11 Right?

12 THE WITNESS: That's correct, Your Honor.

13 THE COURT: All right. Now, I've heard all I need to
14 hear on that subject. I understand that you disagree, but what
15 we're about right now is did he tell me something under oath at
16 the *Garcia* hearing that is inconsistent with what he told the
17 Grand Jury at the time this indictment was returned. It's a very
18 narrow inquiry. And whether he thinks it's legally enforceable
19 or not, you know what? It doesn't matter to me. I'm trying to
20 find out if he committed perjury. That's what you're suggesting,
21 that he committed perjury, that he committed perjury in front of
22 the Grand Jury, presumably that that happened with the knowledge
23 and participation of the prosecutor. Am I right? That's the
24 standard you have to meet, right?

25 MR. STANFORD: Yes, sir.

1 THE COURT: Okay. Well, let's go to that.

2 MR. STANFORD: And that's why -- Judge, I asked him if
3 you're going to testify to a material fact and have a belief that
4 that material fact is correct, you would want to first
5 corroborate it.

6 Am I right, Mr. DeSalvo?

7 MR. WALKER: Again, Your Honor, my objection is -- the
8 Court absolutely correctly stated the standard which is he
9 intentionally committed perjury. The fact that he didn't read
10 that document doesn't mean he committed perjury.

11 THE COURT: I'm going to overrule.

12 Would you want to corroborate something that was told
13 to you in your interviews with witnesses?

14 THE WITNESS: Well, yes, and part of the corroboration
15 process is many individuals telling you that.

16 THE COURT: Next question.

17 BY MR. STANFORD:

18 Q Now, after the December 8th raid, you and Agent White
19 began conducting what I would just say were a lot of witness
20 interviews, correct?

21 A And also metro narcotics. They had their investigation as
22 well. Many of the times we conducted them together.

23 Q Okay. Well, to the extent that you and Agent White were
24 doing it as part of this investigation, that's going to be the
25 focus of my inquiry.

1 A Okay. But they were parallel investigations, so we went on
2 some interviews that metro narcotics wanted to do to further
3 their investigation that may not have had any impact on our
4 investigation.

5 Q And on those interviews that you went on and the main focus
6 was metro narcotics, would you or Agent White have documented or
7 taken notes of that interview and reduced it to a DEA-6 or some
8 type of report?

9 A Agent White may have, yes.

10 Q Is it the practice of your office in conducting an
11 investigation -- if you attend an interview or a meeting of a
12 witness, whether you're initiating it or another law enforcement
13 agency is, the fact that you're attending and participating in
14 it, is it your practice to reduce that interview to some type of
15 DEA-6 or Report of Investigation?

16 A Yes.

17 Q Okay. So then every interview that you would have attended,
18 whether you initiated it or another law enforcement agency
19 initiated it, there would be a report?

20 A Not every interview. I won't make that statement. I'm not
21 saying every interview.

22 THE COURT: What would be the criteria?

23 THE WITNESS: For a report to be written?

24 THE COURT: Yes.

25 THE WITNESS: Well, it just depends. It may be a

1 casual conversation. You're meeting with someone and you're
2 talking to them about various things. If it doesn't get into an
3 area where you think it needs to be documented, you necessarily
4 won't document it.

5 THE COURT: Is that a policy somewhere?

6 THE WITNESS: I'm not sure. If there's an informant
7 that's involved and you're potentially trying to recruit an
8 informant initially, that may not be documented right away. It
9 depends on how it goes. Then you would document that individual
10 as an informant later.

11 THE COURT: Is that left to the discretion of the
12 agent?

13 THE WITNESS: Yes.

14 BY MR. STANFORD:

15 Q I'm going to ask you about the DEA policy on recording
16 witness interviews. Okay?

17 A Yes.

18 Q Can you tell the Court what is the DEA policy on recording a
19 witness interview? Is there a policy, number one?

20 THE COURT: Let's clarify that, please, Mr. Stanford.
21 Are we talking about a tape recording?

22 MR. STANFORD: Any kind of audio or video recording of
23 a witness interview.

24 THE WITNESS: Generally, yes, we do not.

25 BY MR. STANFORD:

1 Q Generally you do not?

2 A Yes.

3 Q Isn't there a policy in the DEA, the agents operational
4 manual, which essentially prohibits agents from recording audio
5 or video recordings of interviews unless they have some type of
6 approval from a higher-up or a supervisor?

7 A I wouldn't necessarily say that. I mean, I could be
8 mistaken. There's a lot of policies within the government, but
9 generally you can record an interview. Certainly in the
10 beginning of this investigation we were conducting a joint
11 investigation with metro narcotics. Their policy was to record
12 and I can't tell them not to.

13 Q Okay. When you met with Paul Buswell on February 15th,
14 2012, where did that meeting take place?

15 A At the Lafayette Police Department.

16 Q And that was a DEA investigation that you and Agent White
17 were conducting on that day; isn't that true?

18 A No. Also, Ryan Shanahan was there. I think he's the one
19 who recorded it.

20 Q Did Agent Shanahan record it or Agent White?

21 A It could have been both. Many times each of them will have
22 their recorder, but we're in that gray area because at that time
23 Agent White was part of metro narcotics. He wasn't with the
24 DEA Task Force agent at that time. I believe Kane Marceaux may
25 have left. I'm not sure if he was officially assigned.

1 So I accompanied Agent White and Agent Shanahan, like I
2 said before, because we had an interest in the case, because DEA
3 had an interest in this nationwide. I just don't recall who
4 recorded. I didn't wear a recorder. But if you wanted to
5 record -- many times we do joint investigations where they do
6 want to record. We can't tell them not to.

7 Q I understand that, but the fact that you, a DEA agent, was
8 cooperating or involved in that interview, I'm sure you would
9 have been told that the interview was going to be recorded,
10 right?

11 A Yes.

12 MR. WALKER: And, Your Honor, I object to this. I
13 don't see the relevance of whether they recorded the interview or
14 not.

15 THE COURT: Well, I agree with you.

16 Your answer was yes?

17 THE WITNESS: I believe so.

18 THE COURT: Well, is your answer yes?

19 THE WITNESS: What was the question?

20 BY MR. STANFORD:

21 Q The question is, prior to the interview --

22 THE COURT: No. I'm going to read the question now
23 because he actually answered. You said, Mr. Stanford, "I
24 understand, but the fact that you, a DEA agent, was cooperating
25 or involved in that interview, I'm sure you would have been told

1 that the interview was going to be recorded, right?"

2 THE WITNESS: Oh, yeah. I knew that it was going to be
3 recorded, yes.

4 BY MR. STANFORD:

5 Q Okay. Now, prior to that interview, the conversations
6 Mr. Paul Buswell had with Agent White, the telephone
7 conversations were also recorded. Were you aware of that?

8 A I believe so. Some of them, yes.

9 Q And prior to those telephone calls being recorded, there's
10 an individual that I'm sure you're familiar with. His name is
11 Johnny Cospers, correct?

12 A Yes.

13 Q And Mr. Cospers is a franchise owner or was a franchise
14 owner?

15 A Yes.

16 Q And did either you or Agent White have Mr. Cospers call
17 Paul Buswell and record a conversation with him sometime in
18 January?

19 A Yes, I believe so.

20 Q Okay. Prior to having Mr. Cospers call Mr. Paul Buswell and
21 record that interview, did you give him, for lack of a better
22 word, a script or questions that you wanted Mr. Cospers to ask
23 Paul Buswell in that recorded conversation?

24 A I did not. I don't think I participated in that. I don't
25 recall being there when that recording was -- I know I wasn't

1 there when the recording was made.

2 Q Was Agent White present?

3 A Agent White was probably.

4 THE COURT: Do you know?

5 THE WITNESS: I know he was there, yes.

6 THE COURT: All right.

7 THE WITNESS: And Agent Shanahan I believe as well.

8 BY MR. STANFORD:

9 Q So Agent White and Shanahan, while in the presence of
10 Mr. Cospers, Mr. Cospers made a consensual telephone call to
11 Paul Buswell that was recorded?

12 A Yes.

13 Q Okay. Now, you've had an opportunity to listen to that
14 call; isn't that true?

15 A I don't think I've listened to it. I may have heard an
16 excerpt of it, but I don't recall listening to that conversation.

17 Q Agent White who was working under your supervision would
18 have reported back to you at some point in the investigation, for
19 sure prior to February 15th when you sat down with Mr. Buswell,
20 to relay to you that this is what was said between Cospers and
21 Paul Buswell on this date. Would that be fair?

22 MR. WALKER: Objection to relevance.

23 THE COURT: I'm going to overrule it.

24 Mr. Stanford, I'm going to let you make a record, but
25 not much more. All right? This is not that relevant.

1 You can answer it.

2 THE WITNESS: I'm sure that Agent White generally gave
3 me an overall idea of what happened in the recording, but I don't
4 remember verbatim what was stated.

5 BY MR. STANFORD:

6 Q But specifically for purposes of Paul Buswell's interview,
7 you would have known that Mr. Cosper and Paul Buswell discussed
8 the fact that I was not representing any of the franchise owners.
9 I was not even representing Paul Buswell. I was only
10 representing Richard Buswell individually pursuant to his arrest
11 in the state drug charges and handling whatever forfeiture
12 matters that came up with regards to Curious Goods. That was
13 discussed in that conversation. Am I right?

14 A I do not know exactly if that was discussed or not. I
15 honestly do not know. I would have to listen to the recording or
16 review a transcript.

17 Q Okay. And let's fast-forward to February 15th of 2012
18 when you met with Mr. Paul Buswell.

19 A Yes.

20 Q During that interview Mr. Buswell told you very specifically
21 that I represented Richard Buswell on the state drug charge,
22 state drug case, and was also handling any pending forfeiture
23 matters; isn't that right?

24 A And that you were part of the RCA.

25 Q Well --

1 THE COURT: Answer the question first.

2 THE WITNESS: I'd have to look at the transcript or
3 listen to it. He may have said that. I just don't have that
4 type of memory that I can recall those exact words.

5 BY MR. STANFORD:

6 Q Okay. Did I give you a copy of the --

7 A Yes. I do have a copy.

8 THE COURT: Of what? Y'all are communicating real
9 well. You already know what he gave you a copy of. What are you
10 talking about?

11 MR. STANFORD: We're talking about the transcript.

12 THE COURT: Of?

13 MR. STANFORD: Of the February 15th, 2012, interview
14 of Paul Buswell. Do you have a copy of that, Judge?

15 THE COURT: No. They've got my monitor working,
16 though, so if you want to just put it on the ELMO, that will be
17 fine.

18 BY MR. STANFORD:

19 Q If you look at the bottom of page 58, Agent White is asking
20 Paul directly -- he's saying, "Would Richard be willing to talk
21 about this?" So Agent White is the one initiating that inquiry.
22 Am I right?

23 A I can't answer that because there was a lot going on. There
24 were phone conversations that occurred prior to this that I
25 wasn't privy to, including this transcript. There are a lot of

1 things that are said in here that if -- you're picking out one
2 small, little part. I can't answer that. I would need to read
3 this entire thing to get a better understanding of what was said
4 overall. If you're stating that in one little part of this he
5 makes this statement, I can't answer that because this was a
6 continuing process. I know that Will White spoke to him several
7 times prior to this. I can't accurately give you an answer.

8 Q Okay. February 15th of 2012, was that the first time you
9 met Paul Buswell?

10 A I think it was the first time I met him, yes.

11 Q Okay. And, again, I'm going to direct you to here.
12 White said, "Let me ask you this. Not saying that it's going to
13 happen, but would Richard be willing to talk about this?"

14 Now, the prior conversation that you had with
15 Mr. Buswell on that date was regarding Curious Goods franchises,
16 Mr. Miyagi, those types of issues, correct?

17 A The prior conversation that I had with him?

18 Q That is recorded.

19 A Yes.

20 Q Okay. So right here Will White, Agent White, is asking him,
21 asking Paul, "Would Richard be willing to talk to us about this?"
22 And Paul responds, "I would think so. Really we have nothing to
23 hide. What I'm telling you is what happened."

24 And then the last paragraph, Mr. White says, "We would
25 have to get some approvals. He has got representation. I mean,

1 clearly he has some representation. We would have to run it by
2 the prosecutors if he would be willing to talk about his legal
3 representation being there. If you talk to him or talk to your
4 mom or whoever is talking to him, I'm sure that he is making
5 phone calls from the jail."

6 A Okay.

7 Q Okay. Now, if you go to the next page, which is page 59,
8 Paul asks -- Paul says, "I'm not saying that he would be willing
9 to help at all, but could it help him at all?" And you said,
10 "I don't know." Then the third party there you're saying is
11 Agent Shanahan?

12 A I believe so.

13 Q He says, "It can't hurt him"?

14 A Yes.

15 Q And then you say, "There's going to be some issues because
16 he has got representative and we have to get their okay and such.
17 Let me ask you something. Is it possible that Richard may not
18 have told you everything, that he may have known that this is
19 vague, that this is not going to be a problem?"

20 In the first sentence you acknowledged that Richard
21 does have representation, correct?

22 A Yes.

23 Q And you knew that I represented Richard?

24 A In the securities fraud case, yes.

25 Q Well, are you saying that you didn't know that I represented

1 him on the pending state drug case?

2 A No. I think I testified to that, that I assumed you were
3 going to represent him because there were statements made that
4 you were going to represent everyone, including all franchise
5 owners. Everyone involved, ten, fifteen individuals, told me
6 that Stanford is our attorney.

7 Q Okay. Let's talk about what you just said. I'm assuming
8 that these conversations would have happened -- these interviews
9 were after the December 8th raid or the search warrants and
10 arrest warrants of Richard Buswell and others, correct?

11 A Some of them. Some of them were part of the metro narcotics
12 investigation.

13 Q But the interviews would have started, at the earliest, on
14 the 8th and moved forward, correct?

15 A Correct.

16 Q Okay. Now, you were aware through metro narcotics that
17 Richard Buswell self-surrendered at my office to Agent -- I think
18 it's Karry Falcon and another agent?

19 A Yes. I don't know if he self-surrendered. I think he was
20 arrested.

21 Q Well, he was at my office. Agents came -- I'm sure they
22 told you -- and asked me if he was here. I said yes. I had
23 Mr. Buswell come out where he was taken into custody.

24 A Yeah, but I think they located him there. I don't think he
25 self-surrendered. I don't think he called and said,

1 Scotty Melancon, you know, I'm here. I think some information
2 was passed on to them.

3 Q Okay. But my point is at that point in time I advised
4 Agent Karry Falcon that I represented Mr. Richard Buswell on this
5 arrest for these pending charges and advised him not to discuss
6 or not to even attempt to try to interview Mr. Buswell. You were
7 told that?

8 A No, I was not.

9 Q Well, subsequent to this you were aware that, at a minimum,
10 on that day everybody who was arrested that day was interviewed,
11 correct, either arrested or detained? Milo Granger and
12 Roosevelt Jones were not arrested. They were detained and later
13 released. Correct?

14 A We weren't part of that investigation. I wasn't out there.
15 I wasn't even involved in any of that on that day.

16 Q Agent White was?

17 A Yes.

18 Q He was the one interviewing them and recording it?

19 A And he was working for Lafayette Metro Narcotics at the
20 time, not for DEA.

21 Q And my point is after the first of the year or sometime
22 shortly thereafter he went to work for you, correct?

23 THE COURT: We know that. He's already answered that
24 when we started off this morning.

25 BY MR. STANFORD:

1 Q Okay. My point is everyone that was either arrested or
2 detained was interviewed and questioned, it was recorded,
3 everyone except Richard Buswell. Isn't that a fact?

4 A I do not know that to be a fact, no. I have no idea who was
5 interviewed. I don't even honestly know who was arrested. I
6 couldn't name off who -- you could show me 15 names and I may
7 know one or two of them, but we weren't involved in arresting or
8 interviewing people that were working at the stores.

9 Q Well, you have testified consistently that you were working
10 in conjunction with metro narcotics?

11 A After that date. I was not invited.

12 Q I'm not saying that you were there that day. I'm saying
13 after that day you learned that this is what happened.

14 A No, I did not learn.

15 Q You didn't know?

16 A I did not learn that, no. I didn't go back and say, hey,
17 tell me every little fact of this investigation and who was
18 interviewed and who was advised accordingly. I just didn't do
19 it.

20 THE COURT: All right. Are we at a stopping spot,
21 Mr. Stanford?

22 MR. STANFORD: Yes, sir.

23 THE COURT: Okay. Let's take a lunch recess
24 until 1:15.

25 Agent DeSalvo, don't talk about your testimony.

1 MR. WALKER: Your Honor, in all likelihood
2 Agent DeSalvo is going to come to our office to eat, but we're
3 not going to talk about any testimony.

4 MR. FOSTER: Judge, if I may interject, do you intend
5 to go until we finish today?

6 THE COURT: I'm going to try my best to go until we
7 finish.

8 MR. FOSTER: All right. Thank you.

9 THE COURT: It depends on my girl here. If she says
10 I've had enough, y'all have had enough.

11 (RECESS)

12 THE COURT: All right. Good afternoon, everyone.

13 Court will come to order.

14 Mr. Stanford, can you give me some ballpark on how much
15 longer you will have with Agent DeSalvo?

16 MR. STANFORD: I'm going to try to wrap it up in an
17 hour.

18 THE COURT: Let's try to wrap it up in 45 minutes. How
19 about that? Do your best.

20 Mr. Stockstill, you rise to speak.

21 MR. STOCKSTILL: Yes, sir. As the Court is aware, I
22 represent Curious Goods. We've merely filed a motion to adopt
23 the motions that are pending before the Court. It wasn't my
24 intention to ask questions or make arguments. We're leaving that
25 to the lawyers who actually filed the motions.

1 So with that being said, I'd like to notify the Court
2 that we'd like to waive our appearance for this afternoon's
3 matter and ask the Court to please excuse us.

4 THE COURT: That's fine with me. This is your
5 representative, Mr. Paul Buswell?

6 MR. STOCKSTILL: Mr. Paul Buswell or Ms. Buswell who is
7 the majority owner of Curious Goods.

8 MR. WALKER: And Paul Buswell is represented --

9 THE COURT: Hang on.

10 Mr. McCann, you rose to speak?

11 MR. MCCANN: I represent Paul Buswell.

12 THE COURT: Individually?

13 MR. MCCANN: That's correct.

14 THE COURT: You're staying?

15 MR. MCCANN: Yes, sir, I am.

16 THE COURT: All right. Ms. Buswell, are you staying?

17 MS. BUSWELL: Yes.

18 THE COURT: Okay. So you're the only one leaving?

19 MR. STOCKSTILL: Yes, sir.

20 THE COURT: One less lawyer. That's not a bad thing.
21 Have a good afternoon.

22 MR. STOCKSTILL: Thank you, Your Honor.

23 THE COURT: Mr. Walker?

24 MR. WALKER: I was simply going to tell the Court that
25 Randy McCann represents Paul Buswell individually.

1 THE COURT: All right. Are you ready to proceed,
2 Mr. Stanford?

3 Just so that you know, I absolutely want to finish this
4 today because tomorrow at noon I will be going to the circuit
5 conference and I will not be back until a week from today, so if
6 we don't finish today, we've got a long delay and I don't want to
7 do that. I want to leave here today giving everybody pretty much
8 my idea of where things are going to come out. Most of the
9 opinions are written or at least are in draft form with the
10 exception of the ones we're hearing today.

11 You may proceed, Mr. Stanford.

12 BY MR. STANFORD:

13 Q Just for a point of clarification, Agent DeSalvo, can you
14 approximate for me -- we talked about whether or not Agent White
15 was certified and when he was certified. Can you give me an
16 approximation of when he was certified to work as a DEA task
17 force agent?

18 A Well, he was working one case prior to December 8th.
19 That's why we were -- that one case is an ongoing case. I can't
20 mention specifics. In that case he basically is loaned to us by
21 his agency to work a specific case because there's only one
22 allotted spot, which Kane Marceaux had that spot from
23 Lafayette PD where he was the task force agent.

24 So Agent Marceaux, I believe, left at some point in
25 time in January, maybe the beginning of February. Once he moved,

1 there was a process in which a replacement was provided to us for
2 Kane Marceaux. That took a little bit of time for the two
3 captains to decide who would be that replacement.

4 And the reason I'm trying to build a time line, I think
5 the decision was made probably in the February, March time frame,
6 but once he's been committed to take part in the task force, then
7 there's a process where he has to undergo a background
8 investigation where he's able to get clearance to actually have
9 access to our documents and various things. I don't think that
10 actually happened probably until May or June. And like our
11 report writing system, he didn't have access to that. So he was
12 in a limbo stage for probably a good part of the spring. That's
13 the best of my recollection.

14 Q Thank you.

15 You indicated earlier in your testimony -- and I just
16 want one question and then move on -- that no assets were seized
17 of Mr. Malone or Green and you felt they were hiding it in
18 anticipation of being charged. Has your agency or any other
19 agency that you're aware of attempted to track where their assets
20 went?

21 A Yes. I believe Agent Harbourt.

22 Q Okay. Now, we've identified that Mr. Malone and Mr. Green
23 began cooperating with your agency before they were formally
24 charged or indicted; is that correct?

25 A That's correct.

1 Q And do you recall approximately -- would it be in August?
2 We know that we have a DEA-6 that shows an August 20th meeting
3 with Mr. Thomas Malone here in Lafayette. Were there meetings
4 with Mr. Malone or Mr. Green prior to August 20th?

5 A I don't believe so. There may have been because his
6 attorney -- their attorneys I recall meeting with the prosecutors
7 here, possibly before an actual -- with them possibly, but I
8 don't know if we interviewed them initially or there was an
9 agreement made where we then were able to interview them. I
10 don't recall, but there were a series of meetings between
11 Mr. Sadow and I don't recall Mr. Green's attorney's name.

12 Q And although they hadn't been formally charged or arrested,
13 they were not interviewed without their lawyers being present; is
14 that correct?

15 A Well, I think for Mr. Malone, when he was interviewed, I do
16 recall his attorney being present. Mr. Green I think so as well.

17 Q Now, you testified quite a bit this morning that everyone
18 you talked to said I would be representing anyone who was
19 represented -- anyone who was arrested with regards to
20 Curious Goods; is that correct?

21 A If I stated everyone told me that, that was -- that's not
22 correct. I know some individuals told us that, that their
23 understanding was that you would represent everyone.

24 Q Okay. And it was your understanding -- and I think you
25 testified -- I counted 11 times -- at the *Garcia* hearing that you

1 testified that I was the criminal attorney for Curious Goods and
2 that you were told that Richard Buswell had hired me to be the
3 criminal attorney for Curious Goods; is that correct?

4 A Yes.

5 Q And we know that you interviewed Patrick Chauvin who was a
6 co-owner of Curious Goods in January of 2012, correct?

7 A Correct.

8 Q And Patrick Chauvin also told you that I was the criminal
9 attorney for Curious Goods or that's what you testified to at the
10 *Garcia* hearing; is that right?

11 A That's correct.

12 Q Now, when you met with Paul Buswell in February of 2012,
13 February 15th, Richard Buswell was in jail, right?

14 A Yes.

15 Q And you are aware that I had been visiting with Richard
16 Buswell while he was in jail, correct?

17 A Yes.

18 Q And you and/or Agent White were monitoring Richard Buswell's
19 telephone calls from the jail, correct?

20 A I didn't monitor every call, no.

21 Q But you were monitoring most of the calls?

22 A Some. Others were monitoring, so I didn't monitor every
23 call.

24 Q And if you listen to the calls between Richard Buswell and
25 family members or whomever, it was stated numerous times that I

1 was representing him on the state case, the pending charges, and
2 working on trying to get his property and Curious Goods' property
3 back for him, right?

4 A Yes.

5 Q So by the time you met with Paul Buswell on the 15th,
6 Paul Buswell told you and Agent White that I was handling the
7 forfeiture case for sure, correct?

8 A I'd have to look over the transcript and see if he makes the
9 statement, if you'd point that out for me. I mean, that may be
10 possible. I just don't recall.

11 Q Did Agent White tell you prior to going to New Iberia on
12 April 5th that he had called Paul Buswell and asked
13 Paul Buswell who he should serve forfeiture paperwork on?

14 A He may have, yes.

15 Q And didn't you also know on that day that -- or didn't you
16 know by April 5th that Richard Buswell had been removed as an
17 owner or interest holder in Curious Goods?

18 A I knew that they -- I knew that his name was taken off of
19 some paperwork, yes, I think pursuant to his revocation hearing.

20 Q So you were aware at the revocation hearing that one of the
21 things that Magistrate Hanna was concerned about was that he not
22 have any involvement with Curious Goods?

23 A Yes, but I knew that not to be the case. I knew that he was
24 still involved.

25 MR. STANFORD: What's my next exhibit?

1 THE COURTROOM DEPUTY: Twenty-one.

2 BY MR. STANFORD:

3 Q Okay. I'm going to show you what I've marked as S-21. This
4 is a document filed with the Secretary of State on
5 January 21st, 2012. And I'm going to turn to the third page.
6 It shows on this document that Richard Buswell has been removed
7 as of January 21st as having any ownership interest or anything
8 to do with Curious Goods as well as Patrick Chauvin?

9 A Yes.

10 Q And Paul Buswell was replaced as a member?

11 A Yes, I see that.

12 MR. STANFORD: Okay. I would like to offer, file, and
13 introduce this as S-21.

14 MR. WALKER: I have no objection.

15 THE COURT: Let it be admitted.

16 BY MR. STANFORD:

17 Q And I'm going to show you what I've marked as S-22 which is
18 another document filed with the Secretary of State on
19 March 2nd, 2012. I'm going to turn to the third page. And it
20 shows that Attorney Barry Domingue has been removed as an agent
21 for service of process and that Paul Buswell is now listed as the
22 agent for service of process.

23 A Yes. This is March 2nd, correct?

24 Q Correct.

25 A Yes.

1 MR. STANFORD: I'd like to move this into evidence as
2 S-22.

3 THE COURT: Any objection, Mr. Walker?

4 MR. WALKER: No, Your Honor.

5 THE COURT: Let it be admitted.

6 BY MR. STANFORD:

7 Q So prior to April 5th when Officer White or Agent White
8 called Paul Buswell, you were aware that Paul Buswell was an
9 owner of Curious Goods as well as an agent for service of process
10 for Curious Goods?

11 A Yes.

12 Q And by April 5th you were also aware that I represented
13 Richard Buswell on the pending state case as well as any pending
14 forfeiture matters?

15 A At that point I think I believed that you represented him
16 when he was arrested, yes.

17 Q When he was arrested on the state charges?

18 A Yes.

19 Q Did you see anything or -- see anything or hear anything
20 that would have tipped you off to the fact that I was no longer
21 representing him on the state charges?

22 A No.

23 Q As a matter of fact, you -- not you, but agents were
24 monitoring Richard's phone calls as well as my visits to Richard
25 at the Iberia Parish Jail; isn't that correct?

1 A I'm not aware of them monitoring your visits. I am not. I
2 know calls were being monitored between -- as far as I know
3 between you and Mr. Buswell.

4 Q Okay. Now, last week Agent White testified, and I think you
5 also did today, this afternoon, that Ryan Shanahan -- he said
6 that -- and I have a copy of the transcript that has been
7 produced as to Will White and Alan Haney. On page 58 Agent White
8 acknowledges that actually Ryan Shanahan would be the primary
9 case agent on the state case. Is that correct?

10 A Yes.

11 Q And I believe you discussed some of the search warrants, and
12 I showed you one of them that actually indicated that Ryan
13 Shanahan was in fact the case agent on the metro narcotics case?

14 A Well, I think the way he was assigned is he was the case
15 agent. They basically divided the case into different sections.
16 Ryan Shanahan was the case agent. I think Will White was the
17 agent in charge of the asset part of the case.

18 Q Okay. The document I showed you this morning, the affidavit
19 for the search warrant, only says that Ryan Shanahan is the case
20 agent for the Curious Goods investigation.

21 A Yeah, but many times in cases there's more than one case
22 agent. I was told by metro narcotics that Will White was to
23 handle exclusively the case for the assets.

24 Q And who told you that with metro?

25 A I believe one of the captains, Captain Ted Vincent or

1 Captain Babin.

2 Q Okay. Now, at some point --

3 A Can I clarify one thing? Going back to Mr. Buswell's phone
4 calls in the jail, the monitoring, there were calls indicating
5 when you visited. There were calls, but I did not -- me in
6 particular, I did not give an order or any type of instruction
7 for the jail to report when -- there may have been some inquiries
8 on who visited, but I didn't state, hey, I need to know when. I
9 wasn't monitoring his attorney visits. We did come into contact,
10 many of them through Richard's phone calls and subsequent through
11 information, that you guys were visiting.

12 Q Okay. Thank you for clearing that up.

13 Now, at the *Garcia* hearing when I was talking to you
14 about serving Richard -- or actually interviewing Richard, you
15 testified at page 45, line 22 -- I asked you, "Why did you go and
16 interview Mr. Buswell without first contacting counsel?" You
17 said, "Well, we didn't. We went over there to serve paperwork as
18 it relates to forfeiture." Do you remember saying that?

19 A That's correct.

20 Q Now, prior to that, according to Agent White, he had the
21 forfeiture paperwork in hand and went to you and said, I need to
22 serve this. Alan Haney is telling me I need to serve it on
23 Richard Buswell. Is that how it happened?

24 A I don't recall if he had the paperwork. I know that he told
25 me -- he approached me and said, Alan Haney told me to serve

1 Richard Buswell with this paperwork or with paperwork. I don't
2 recall if he had it in his hand. He may or may not have.

3 Q Now, do you recall approximately when this occurred? If you
4 went to see him April 5th, when did you and Agent White first
5 have this conversation?

6 A It was prior to that. I would be guessing. It could have
7 been a week. It could have been two weeks. It could have been
8 about -- between one and two weeks prior.

9 Q Okay. But it was surely sometime in the mid to end of
10 March, 2012, correct?

11 A Yes.

12 Q And I believe you testified earlier that by mid-February or
13 the beginning of March that Agent White, at least at the
14 Lafayette Police Department level, had been approved to work as a
15 task force agent with the DEA, correct?

16 A He was the replacement. I was told he would be the
17 replacement.

18 Q So when he approached you and said he had to serve
19 paperwork, did you ask him what kind of paperwork and why do you
20 need to serve it?

21 A Yes.

22 Q Because you knew then that Ryan Shanahan was also a case
23 agent on that case and was capable of serving any paperwork,
24 right?

25 A No. What was advised when Task Force Agent White was

1 transferred to the DEA by his captains was -- and there were some
2 issues. Obviously there were some issues with Kane being pulled.
3 We did not want Kane to be pulled from the task force. So it's a
4 very complicated issue with some other internal dealings that had
5 nothing to do with this. So when -- and we wanted a replacement
6 for Kane Marceaux.

7 When White was determined to be the replacement, his
8 captain told me the conditions of -- there were new conditions
9 where he would be the replacement, one of which is Agent White
10 will handle all the assets involved in this case. He's been
11 involved in it. We want him to continue as a metro agent to
12 continue with this process.

13 Like I said, it was divided. Shanahan was a case
14 agent, so was Will White. He was specifically geared toward
15 assets. And I agreed to it.

16 Q Okay. So if I'm following you, one of the conditions of
17 Agent White being assigned to you was that he would continue to
18 handle all of the asset or forfeiture issues as it relates to
19 Curious Goods?

20 A In the state case, yes, sir.

21 Q In the state case. Thank you. I'm glad you pointed that
22 out.

23 Now, Agent White testified in his testimony at page 75
24 that when Assistant District Attorney Alan Haney asked him to
25 serve Mr. Buswell personally, and I'm paraphrasing, he was a

1 little apprehensive because he knew Mr. Buswell had a lawyer, and
2 thereafter he approached you and told you that, you know,
3 Alan Haney wants me to serve this paperwork, this forfeiture
4 paperwork, but Mr. Buswell -- Daniel Stanford represents him on
5 this, kind of what should I do.

6 A You said page 75 of what? I'm not clear on what transcript
7 you're referring to.

8 THE COURT: Friday's hearing.

9 THE WITNESS: Okay. Could you repeat what was said or
10 let me take a look at it? Can I do that?

11 THE COURT: Yes.

12 BY MR. STANFORD:

13 Q At the top of the page, I don't know if you can read that.

14 A Yeah, I can read it.

15 Q I said, "You knew that Mr. Buswell had a lawyer, you had
16 been told that, and you were trying to clarify who the
17 appropriate party was to serve, correct?" And he said, "Yes."
18 And he's saying, "There's some hesitation on my part because he
19 has representation. I've never been in a situation like that,
20 but the DA was insisting this is how we've done it in the past.
21 You personally serve them. So I reached out to Mr. DeSalvo and
22 we had conversations with Alan Haney just to confirm as far as
23 what avenues he wanted to proceed."

24 So did you and Agent White have a conversation with
25 Assistant District Attorney Alan Haney about serving this

1 paperwork?

2 A Yes. Initially Agent White told me what Alan Haney directed
3 him to do, and I'm not involved -- I had never been involved in
4 the state forfeiture process. I didn't know that they actually
5 did that. As a federal agent, we don't -- we don't do things the
6 same way they do them, so I was a little confused. So basically
7 what I wanted was to talk to Alan Haney and clarify what exactly
8 he wanted -- what he wanted Will to do as a metro agent and so we
9 called him.

10 Q Okay. And by that time, if Alan Haney is wanting Will White
11 to personally serve certain documents on Mr. Buswell, as his
12 supervisor, because now he's working as a task force agent, you
13 would have looked at the documents for yourself, correct?

14 A I don't think I looked at them, no. We talked to Alan and I
15 asked him what's this all about and why do we have to serve
16 Richard personally. I questioned that.

17 Q What did Mr. Haney tell you?

18 A He said he wanted it done personally. He said that -- I
19 think he said based on his understanding of the process, the
20 state forfeiture process, and for no issues to be raised later,
21 he wanted it personally. I asked him can we serve someone else
22 and he said no.

23 Q Okay.

24 A And I mentioned your name and Mr. Domingue's name to him.

25 Q You raised that to ADA -- to Assistant District

1 Attorney Haney that he's got a lawyer?

2 A Well, no. What I said was -- I said that Mr. Domingue is
3 associated with the company. He's the franchise attorney. And
4 Mr. Stanford was also associated with the company. I was doing
5 it just for ease just because we were busy. I said can we just
6 serve them quickly and he said no. I said okay.

7 Q Okay. Now, right over here Agent White is saying that you
8 had issues as to whether or not it could be done and would this,
9 I guess, be an opportunity or -- be an opportunity as far as if
10 Richard were to approach us and begin talking, because listening
11 to the phone conversations while Mr. Buswell was in jail, he
12 mentioned several times that he wanted to speak specifically to
13 me.

14 Okay. Did you also see this as an opportunity to get
15 in front of Mr. Buswell and possibly interview him?

16 A Without Alan Haney directing us to do that, I didn't want to
17 go talk -- not necessarily want to, but I didn't seek to
18 interview Mr. Buswell.

19 When this happened, I knew this would present a
20 situation that I wasn't real comfortable with, that I needed to
21 talk to the prosecutor. So I spoke to Haney and then I talked to
22 the U.S. Attorney as well and said this is the issue. He's
23 telling us to serve him, not to serve Daniel Stanford, not to
24 serve Barry Domingue. He may talk. He may not talk. We can go
25 in there, throw the paperwork down and walk out, or if he wants

1 to talk, what do we do in that situation?

2 Q But Agent White uses the words "I guess be an opportunity."
3 My question is, did you see this as an opportunity to get in
4 front of Mr. Buswell and interview him?

5 A No, you know, not necessarily to interview him. I did see
6 it as an opportunity. What I saw was happening was that
7 Mr. Buswell was repeating things, or at least I was told that he
8 was repeating things, and I heard some of those things, regarding
9 Special Agent Harbourt and that the government was the big bad
10 wolf and all of this good stuff.

11 We had obviously spoken to Paul Buswell and built a
12 rapport and we were aware that Richard Buswell wanted to talk to
13 us about Pinnacle Products and about the Georgia part of the
14 investigation. So at a minimum I wanted to put -- we serve this.
15 He sees that we're not bad guys. Put a face with the name.
16 We're not the big bad wolf. At some point later on if he wants
17 to talk to us, he can talk to us because he sought a desire to
18 talk to us.

19 Q Well, again, the way that Agent White couched it, he said it
20 would be an opportunity as far as if Richard were to approach us
21 and began talking.

22 First of all, Richard was in jail. Richard could not
23 approach you or Agent White or anybody else. Correct?

24 A That's correct.

25 Q You would have had to initiate contact and approach him,

1 which is what happened, correct?

2 A Possibly.

3 Q And so prior to April 5th Agent White also states that you
4 and he met with Assistant U.S. Attorney Collin Sims to discuss
5 this situation?

6 A That's correct.

7 MR. WALKER: Your Honor, I'm not objecting to the line
8 of questioning. I'm objecting to the form of the question by him
9 reading what Agent White testified. I think that's an
10 inappropriate way to use a transcript of another witness.

11 THE COURT: That is correct, Mr. Stanford. Either give
12 him the transcript with page and line reference or ask the
13 question another way.

14 MR. STANFORD: Yes, sir.

15 BY MR. STANFORD:

16 Q At some point prior to April 5th you and Agent White met
17 with Assistant U.S. Attorney Collin Sims?

18 A That's correct.

19 Q Was anybody else at that meeting?

20 A Yes.

21 Q Who was that?

22 A AUSA Uebinger.

23 Q Anyone else?

24 A Greg Harbourt.

25 Q Anyone else?

1 A I don't think so. I think that was it.

2 Q And the issue then was you had -- or you knew that
3 Agent White had been directed to serve this paperwork. You had
4 pretty much given your word to Captain Vincent that you would
5 allow Agent White to continue handling the forfeiture matters.
6 So you met with the Assistant U.S. Attorneys to discuss, I guess,
7 kind of a sticky situation. You knew that Mr. Buswell had a
8 lawyer, but the Assistant District Attorney is telling you to
9 serve these papers. When you met with the Assistant District
10 Attorney -- I mean, the U.S. Attorneys, did you have the
11 documents in your hand that you were supposed to be serving?

12 A I don't believe so.

13 Q Is there a reason why you would go to a meeting with them
14 about serving case specific documents regarding a forfeiture
15 matter and not have those documents with you to show the
16 Assistant U.S. Attorneys that this is what we're talking about?

17 A We explained to them what it was. I don't even know if
18 Will White had the documents at the time. I don't recall.

19 Q Well, what did you explain to them? What did you explain to
20 them with regards to the documents?

21 A Alan Haney wanted us to serve documents. Personal service
22 is what I knew. I had never seen any of those documents before.
23 I don't recall seeing them before the day we served them. I was
24 accompanying Agent White because we were having issues with -- we
25 were having issues with -- we were having issues with metro

1 narcotics at the time and I didn't want to go back and say we
2 can't handle this. So I was looking, just out of ease, to
3 initially serve you or Mr. Domingue. We had conversations about
4 it, but I wasn't familiar with the process. I didn't take the
5 time to -- other than just talking to Mr. Haney, I didn't take
6 the time to research it.

7 Q Okay.

8 A I took him for his word that these have to be served, and
9 from what I understood, they're served on everybody. Once
10 someone is arrested, assets are seized.

11 Q So one question. You don't know as you sit here today
12 whether prior to April 5th Agent White had the documents in
13 hand or in his possession?

14 A Well --

15 Q Do you know if he had them or don't you?

16 A I don't know. I don't know. He may have had them. Like I
17 said, he may have had them. I know there were some other
18 individuals that were being served at about the same time,
19 because, again, when Will White approached me, he was -- he had
20 dual roles, so the time he approached me was when I became aware
21 of it. He did do some things on his own that were part of what
22 they normally do in metro narcotics. I didn't ask him to report
23 to me every little thing he did. I did as much as I could
24 handling part of this case and a pretty large caseload of other
25 cases that were going around my office with nine task force

1 agents and two special agents. I don't know. He could have had
2 them. We could have actually brought them to the meeting with
3 Collin Sims and Ms. Uebinger. I just don't recall.

4 Q Okay. That's fair.

5 Now, April 5th, that's the day you went to
6 New Iberia. At what point in time had you been notified by your
7 superiors that DEA was to formally get involved in this
8 investigation or the investigation of the synthetic cannabis?

9 A Well, I'm not informed by my superiors. That decision is up
10 to me whether or not we're going to get involved in the case and
11 it's done in conjunction with the United States Attorney's
12 Office. It was an ongoing thing. It was probably late spring
13 until we decided to charge this case. There was a very good
14 chance it wasn't going to be charged federally.

15 Q Well, when you met with Paul Buswell February 15th, 2012,
16 you told him unequivocally this case is going to be prosecuted
17 federally?

18 A Yeah.

19 Q You had already talked to the U.S. Attorney's Office and you
20 had, I guess, gotten the green light from Ms. Finley that there
21 was no question about it, it was going federal; is that correct?

22 A Well, certainly, I mean, there's a lot of cases that we
23 would like to go federally and many times we're told move forward
24 with it, but, from my experience, until I see that indictment or
25 a Grand Jury scheduled, many times it just doesn't happen.

1 You can ask Mr. Hipwell the same thing. As a
2 prosecutor, it's not up to them. It's up to the management. It
3 has to go through an indictment review committee. I've had many,
4 many occasions where I planned on moving forward with it and it
5 was turned down.

6 MR. STANFORD: Judge, I don't think that I have at this
7 point introduced the transcript of Paul Buswell.

8 THE COURT: You have not.

9 MR. STANFORD: At this point I would like to offer,
10 file, and introduce it. I know that I've given copies to
11 everyone.

12 MR. WALKER: I don't object.

13 MR. STANFORD: This is S-23.

14 THE COURT: Let it be admitted. This would be the
15 February 25th?

16 MR. STANFORD: February 15th.

17 THE COURT: 15th. Excuse me.

18 BY MR. STANFORD:

19 Q On page 23 at the top, you made a statement that you talked
20 to state prosecutors, the DA, and you talked to the federal
21 prosecutors, and they have all been told by their bosses that
22 it's going to get prosecuted.

23 By February 15th had you talked to the
24 U.S. Attorney's Office about this case being prosecuted
25 federally?

1 A Well, part of the context of this -- and you need to go back
2 a little bit -- is Paul was trying to convince me that he wanted
3 to go back out and sell these products in his stores. Really
4 what I was trying to do was convince him that it would be bad for
5 him to do this and that federal cases are being pursued and state
6 cases are being pursued.

7 And I told him if he goes and sells this -- he said he
8 wanted to sell it for 90 days to get his money back that he lost
9 and get out of the business, and I tried to assure him, Paul,
10 this is not a good -- if you look at what I say, "We don't want
11 someone who has a career in law enforcement to ruin that
12 facing -- and we are not saying that, obviously, there is some --
13 there is always..."

14 I'm trying to explain to him. I'm trying to convince
15 him that it would be a bad idea for him to move forward with
16 selling this product. I believe that was the context of it. So
17 did I exaggerate to try to benefit him? Yes. I was honestly
18 trying to tell him it would be a bad idea for him to sell this,
19 but I can tell you I had no assurances from the U.S. Attorney's
20 Office that this would ever be prosecuted, to the contrary.

21 Q Now, you said earlier -- and I'm not sure if I got that
22 right -- that you were the one who was going to make the decision
23 about whether or not the DEA was going to pursue this case?

24 A Yes.

25 Q Okay. Well, do you know when you made the decision to move

1 forward or all in as far as the DEA investigating this case?

2 A Well, again, I'm going back to if it's going to be
3 prosecuted on a state level, which I didn't have a whole lot of
4 confidence in, well, then I wouldn't -- I would move forward in
5 my investigation parallel with their investigation and at some
6 point in time we'd have to make a decision.

7 What I was interested in was -- and I had these
8 discussions -- was anything out of the reach of the state
9 investigation, Pinnacle Products, Boyd Barrow, NutraGenomics. If
10 they weren't going to prosecute them, I would prosecute that part
11 of the case, and so I was moving forward on that part of the case
12 for sure, whether that would be prosecuted, because there were
13 hundreds of offices, or maybe less than hundreds, but many
14 offices that were pursuing NutraGenomics and various companies
15 around this country because they were supplying several states.

16 Q Okay. I understand all of that, but my question simply is,
17 do you recall when you made the decision to move forward with
18 this?

19 A What do you mean by move forward?

20 Q I mean prosecute it.

21 A I have no decision in the prosecution. I investigate it and
22 turn over the investigation, but many, many times my
23 investigations are turned over, and because there may be a state
24 prosecution or because it doesn't meet their guidelines, it
25 doesn't get prosecuted, so all I can do is move forward in my

1 investigation and hope for the best.

2 Q Okay. So at the meeting with the Assistant U.S. Attorneys,
3 was it discussed that you were going to record the meeting with
4 Richard Buswell?

5 A Yes.

6 Q And who brought that up?

7 A At first I think I had stated that we probably wouldn't
8 record it, and it was advised that we probably should record it
9 for our own protection and so I agreed.

10 Q And who was it specifically that advised you that you should
11 record it for your own protection?

12 A I think it was a combination of Collin Sims and
13 Ms. Uebinger.

14 Q Okay. Now, did the Assistant U.S. Attorneys ask you -- do
15 you recall if they asked you, okay, well, what paperwork
16 specifically do you have to serve on him because -- did it come
17 up that you could serve the corporate agent? Did that come up in
18 the conversation?

19 A I don't recall.

20 Q But you knew at that time -- what you knew at that time was
21 that the asset that was in question was \$19,695, right?

22 A Yes.

23 Q And that asset had been seized at 412 Old Settlement Road
24 and it was in a bank bag with Curious Goods deposit receipts and
25 various other things, correct?

1 A That may be the case, yes. I don't recall exactly.

2 Q And the consensus was that that was the property of
3 Curious Goods, the company, correct?

4 A Yes, I believe so.

5 Q Okay. And you knew that if it's company property, that you
6 could serve Paul Buswell since he's the agent for service and
7 he's also an owner. Since you knew that, did you bring that up
8 to the Assistant U.S. Attorneys at your meeting?

9 A What I told them was what Alan Haney directed us to do. I
10 don't recall -- he gave us no leeway. He said he needs this
11 done. What do we do? What does Will or I do, if anything?

12 Q Okay. Did Will White tell Agent DeSalvo this is the type of
13 paperwork I have to serve, and because it's this type of
14 paperwork, it has to be done this way? Did you have that
15 conversation with Will White or with the Assistant U.S.
16 Attorneys?

17 A That's possible.

18 Q Now, I'm going to show you what's already been introduced.
19 It was introduced last week in this hearing. And I'll start off
20 with S-5. Can you see that okay?

21 A Yes, sir.

22 Q Do you recognize this document?

23 A I don't recognize it. I mean, I've seen it, but I don't --
24 there's nothing on it that indicates to me that I had that. I
25 mean, does it have a signature on it or anything like that for me

1 or --

2 Q Let me ask you this. Do you know who wrote "5th, April,
3 2012," and circled "personal service"?

4 A I don't.

5 Q Okay. Now, if you look at the top of it, it says, "You are
6 hereby authorized and ordered to seize for forfeiture," and right
7 above that right here, "property described to be subject to
8 forfeiture under the Laws of Louisiana."

9 So the caption of this seizure warrant indicates that
10 whatever property -- and we're talking about the \$19,695 -- had
11 been seized for forfeiture, correct?

12 A Yes.

13 Q Based on the document. It doesn't say anything about
14 evidence.

15 A Which I have absolutely seen this as --

16 Q And I appreciate that, Agent DeSalvo, and I'm not trying to
17 trick you. I'm just saying that's how it reads.

18 A It may. It's foreign to me basically. I see at the top
19 "Seizure Warrant." So I don't know. Is that a seizure
20 warrant?

21 Q Yeah. That's what it says.

22 A Okay. Well, I...

23 Q And turning to the second page of the document, that says
24 "Rights of Owner/Interest Holder." Do you see that?

25 A Yes.

1 Q Do you see where it says "Notice"? Can you read that
2 sentence for me?

3 MR. WALKER: Your Honor, my objection is this. The
4 witness has testified he doesn't know this document. He's not
5 sure he's ever seen this document before. The document is in
6 evidence, and so, as a result, we're just wasting time.

7 THE COURT: It's wasting time, Mr. Stanford. I've read
8 the document. I don't need him to read it to me.

9 MR. STANFORD: Well, Judge, I'll just make one
10 significant point.

11 BY MR. STANFORD:

12 Q The first sentence says that forfeiture proceedings under
13 Louisiana law have begun against property in which you are
14 believed to hold an interest as described on the Notice of
15 Forfeiture attached.

16 Was there any other document that accompanied these
17 documents when you went to New Iberia on April 5th, 2012?

18 A I don't recall any other documents, no.

19 Q Okay. So according to this Rights of Owner, there should
20 have been a Notice of Forfeiture attached?

21 A I have absolutely no idea. I don't know. I've never
22 handled a state forfeiture case.

23 Q And whose signature is this?

24 A That's mine on the right.

25 Q This is yours?

1 A Yes.

2 Q This is Agent White's?

3 A Yes.

4 Q Is that your handwriting here?

5 A Yes, that is.

6 Q And this says "refused"?

7 A Returned or refused, yes.

8 Q Okay.

9 THE COURT: I'm glad you have trouble reading your own
10 writing.

11 THE WITNESS: But it was only my signature. I didn't
12 write any of that other on the bottom.

13 THE COURT: While he's searching over there for
14 whatever his next question is, this interview of Mr. Paul Buswell
15 on February 15th, 2012, was he aware that it was recorded?

16 THE WITNESS: No, sir.

17 MR. STANFORD: Your Honor, should I proceed?

18 THE COURT: Yes.

19 BY MR. STANFORD:

20 Q Prior to going to New Iberia to the jail, was it your
21 intention to just walk in, like you said earlier, and drop off
22 the paperwork and leave?

23 A Yes. That was my intention, but I knew there were other
24 possibilities.

25 Q Okay. You testified at the May 14th Garcia hearing that

1 you told Mr. Buswell you were there for the sole purpose -- the
2 only reason was to serve those documents?

3 A Right.

4 Q And you indicated at page 47, line 8, that the reason that
5 you engaged him was because he persisted in talking to us and we
6 talked?

7 A Repeat that. I'm sorry.

8 Q At page 47 of the transcript, line 3, I asked you, "And on
9 that day you knew he had a lawyer, you knew he was represented?"
10 You said on line 5, "Yes, I did."

11 A Let me pull up the transcript again. Page again? I'm
12 sorry.

13 Q Page 47, line 3.

14 A Page 47, line 3, is a question from you.

15 Q Correct.

16 A "And on that day you knew he had a lawyer, you knew he was
17 represented?" Yes.

18 Q And the next question at line 6, "And you nevertheless
19 continued or persisted in your attempts to interview him,
20 correct?" And you said, "He persisted in talking to us and we
21 talked."

22 A Yes. I didn't try to coerce him into talking or anything
23 like that. When we walked in there, he started talking about
24 various things as we were explaining the paperwork, so we asked
25 him to focus on the paperwork. He continued. From my

1 recollection -- I don't have that in front of me. My
2 recollection is he blurted out various things related to the
3 case. And at some point in time I said we were here to serve
4 this paperwork. Will White is here to serve this paperwork, and
5 if you want to talk, we'll talk, but we have to advise you of
6 your *Miranda* rights.

7 Q Now, please turn to page 76 starting at line 9. I asked you
8 a question, "Isn't it true that soon after the raid, which
9 occurred December 8th, 2011, in your first round of interviews,
10 you were already telling individuals that I could not represent
11 Mr. Buswell because I had a conflict?" And your response was, "I
12 didn't tell him that. I asked them if that occurred." And my
13 question was, "If what occurred?" And then you explained at
14 line 15 "If -- what was stated was, speaking to Paul and Bonnie,
15 Paul was stating that you -- that Richard wanted to talk to us,
16 be interviewed about Pinnacle Products and NutraGenomics."

17 That was your testimony, correct?

18 A Yes.

19 Q Now, if we look at Mr. Buswell's interview of
20 February 15th, 2012, at page 58, at the bottom. Just let me
21 know when you're there.

22 A Yeah. But in my testimony I don't say which date he told us
23 that. We talked to him on the 16th as well, and he told us he
24 wanted to talk about -- specifically about Boyd Barrow and
25 Pinnacle and NutraGenomics.

1 Q Okay. Are you at page 58 of Paul Buswell's interview?

2 A Yeah. But what I'm saying is in this *Garcia* hearing I'm not
3 referring to a specific date. I'm telling you, to clarify, there
4 were two interviews two days in a row, and he did tell me that he
5 wanted to talk on the 16th.

6 Q Okay. But let's look at the transcript of the 15th at
7 page 58. At the bottom --

8 A What page?

9 Q Fifty-eight.

10 A Okay.

11 Q Where it reads by Will -- the subject was brought up by
12 Agent Will White. He said, "Let me ask you this," speaking to
13 Paul Buswell. "I'm not saying that it's going to happen, but
14 would Richard be willing to talk about this?"

15 So Agent White and/or the agents were the first ones to
16 bring up the topic about would Richard Buswell be willing to
17 talk, correct?

18 A I don't know. I don't know if -- there may have been phone
19 calls. I know there were numerous phone calls where Richard was
20 discussing that he wanted to talk to us. He wanted to -- he was
21 really upset with Boyd. I just don't have access to the dates on
22 that. I can't honestly say if that was the first time Will
23 brought that up or if he had that conversation with Paul prior.

24 Q And you mentioned a subsequent meeting the next day on the
25 16th with Paul Buswell?

1 A Yes.

2 Q Was that subsequent meeting recorded?

3 A Yes, it was.

4 MR. STANFORD: Okay. I have a puzzled look on my face
5 because I don't have that.

6 MR. WALKER: He received it in discovery, Your Honor,
7 both the 15th and the 16th.

8 MR. STANFORD: I don't have it.

9 BY MR. STANFORD:

10 Q Now, do you have a copy of the interview, the
11 April 5th interview? If not, I can give you one.

12 A I do not have a copy of that.

13 THE COURT: Was it transcribed, Mr. Walker, the 16th?

14 MR. WALKER: The 16th was not totally transcribed.
15 There is a portion that's transcribed. It's another long
16 interview. I intend to introduce the transcribed portion in my
17 cross examination of this witness.

18 MR. HIPWELL: Your Honor, I rise just to say that my
19 client tells me, who's listened to the disc that was given to us,
20 that there's about a minute and 38 second recording of his
21 brother Paul on the 16th. And I just offer that. My client
22 tells me that that's what's on the particular tape where the 15th
23 one is.

24 MR. WALKER: The 16th is longer than a minute and a
25 half.

1 MR. HIPWELL: Okay. That's our problem. Thank you.

2 We don't know if we have it, Your Honor.

3 MR. STANFORD: I haven't seen or heard it, Judge, so...

4 BY MR. STANFORD:

5 Q I have just handed you the April 5th transcript of your
6 meeting with Richard Buswell, and we can start with page 1.

7 A Well, let me say that I -- is this the transcript that was
8 used for -- that was used in the past?

9 Q I don't know if it was used in the past. I had it
10 transcribed sometime in July or August.

11 A Yeah. I think I may have looked at this and I'm not real
12 comfortable with the accuracy of this. I would have to go
13 through -- I did -- I have in the past looked through this and it
14 seemed to me to be somewhat inaccurate, so I would have to verify
15 that before I make any statements.

16 Q Have you read the -- you've read the transcript prior to
17 today?

18 A A while ago, yes.

19 Q And you have access to the audio recording of the interview
20 from April 5th?

21 A But I haven't listened to that.

22 Q My question is you have access to it and you can if you want
23 to?

24 A I haven't had -- I haven't had access to it recently. Being
25 in Dallas, I don't have access to that file.

1 Q This transcript was provided to the U.S. Attorney's Office I
2 think probably at the end of August when Judge Haik on
3 August 20th issued an order and ordered that it be provided to
4 the Court. Shortly thereafter, surely before September, it was
5 provided to the U.S. Attorney's Office and to the Court. In
6 September of 2012 you were still assigned to Louisiana, correct,
7 in this office?

8 A Yes. But, again, I don't think -- I don't know however it
9 was, but I thought there were some inaccuracies in looking
10 through it briefly previously.

11 Q Okay. Well, with that noted, let's look at page 1.

12 A Okay.

13 Q Prior to walking into the facility, did either you or
14 Agent White call the facility and ask them to pull
15 Richard Buswell out?

16 A Yes.

17 Q Was it you or Agent White who made the call?

18 A I'm not sure.

19 Q Okay. Richard Buswell was pulled outside of the -- where
20 the prisoners are held into kind of an administrative section of
21 the jail?

22 A Well, you know, we may have actually -- it may have been a
23 request done through Bert Berry who was assigned to our office at
24 the time who was with Iberia Parish, and we -- that's -- the
25 place that we interviewed him is where I interview all inmates at

1 Iberia Parish. So I don't know if we specified it or we just
2 said pull him into where we normally interview them, but that's
3 the only location I've ever interviewed someone, in that
4 little -- it's like a classroom.

5 Q Okay. And you look at page 1. If you listen to the
6 recording that I received from the government, when y'all walked
7 into the facility, the recorder was running, correct?

8 A When we walked into the facility?

9 Q Or was it turned on shortly after entering the facility?

10 A Well, again, based on this transcript, I can't tell. It
11 starts off with, "Hello, Mr. Buswell." So is there dead air
12 before this or not? I just don't recall.

13 Q Okay.

14 A If it was turned on before, my guess is you would capture a
15 conversation between me and Agent White.

16 Q And at the bottom of the page where it says White, he's
17 explaining, "Before we go any further, I'm going to drop off the
18 asset forfeiture. Okay? And I'm going to explain it to you."
19 And he says, "Okay." "It is a seizure warrant."

20 And then he says, "And this is the case number that's
21 assigned and the case number is in reference to your residence at
22 Old Settlement. Don't hold me to a letter T on this, but I
23 believe that in talking to, I think, the captain, \$19,000, I
24 think, was found in a bag with some receipts, like a deposit bag.
25 And I'm not saying that you know it or not. I'm just telling

1 you."

2 And then there's further conversations between
3 Mr. Buswell and Agent White. And at the bottom of the page
4 Agent White says, "Obviously they believe that the money was part
5 of Curious Goods' business itself. Do you follow me?"

6 Do you see that?

7 A Yes.

8 Q And if we turn to the second page, Agent White explains that
9 the District Attorney wants Mr. Buswell personally served. He
10 states that the \$19,695 is being currently stored at LPSO in
11 evidence and the affidavit was signed on December 16th.

12 And Agent White says, "There's a lot of paperwork
13 involved in the case and we're just taking it one at a time, so I
14 may be coming back here next week or next month when they tell me
15 that, hey, we have another paper for you to deliver to him.
16 Okay?" And right there Richard Buswell says, "Well, Dan is
17 handling this now."

18 A Yes, I see that.

19 Q And White says, "But the district attorney wants you
20 personally served." Mr. Buswell said, "And the reason for that?"
21 And Agent White said, "And here is the reason." Mr. Buswell
22 says, "Yeah." And Agent White says, "When I talked to your
23 brother, he was initially very -- we don't need to go no
24 further." Mr. Buswell says, "No, we do." Agent White says,
25 "Hold on. He wants to assure that because of that, we don't want

1 no errors. We don't want no misconceptions whatsoever. We
2 believe that this is the entities of Richard. Serve him
3 personally." Mr. Buswell says, "The entities of Richard?"

4 If you recall at the bottom of page 1, Agent White is
5 telling him that they think it's Curious Goods' money and now
6 he's saying he thinks it's Mr. Buswell's money.

7 Agent White at the bottom of the page says, "But it is
8 a Curious Goods. It was in a deposit bag with slips in it, so he
9 specifically said to serve you with it. Okay? And I am going to
10 explain to you. This is your copy and this is for you and you
11 are also going to get this. This is the rights of ownership for
12 interest holder. This is a step-by-step process on what you need
13 to do as far as contesting the proceedings." Mr. Buswell says,
14 "Oh, yeah, we are going to contest that."

15 Agent White says, "The only thing I require -- you
16 don't have to. Okay? This is the same form. This page 1 right
17 here, you see right here, right here?" Mr. Buswell says, "Yeah."
18 "This is the same as right here." Mr. Buswell says, "I don't
19 have my glasses." Agent White says, "I could tell. I could
20 tell." Mr. Buswell, "Up close. I'm sorry". Agent White says,
21 "It is the same thing, page 1. Rights of ownership interest
22 holder. The only thing that we ask is that because --"

23 MR. WALKER: Your Honor, at this point I'm objecting.
24 He's not asking a question. He's simply reading the transcript.
25 I think the transcript speaks for itself, and we're going to be

1 here all day if he's going to read an hour long transcript.

2 MR. STANFORD: I'll stop. I'll ask a question.

3 THE COURT: Please do.

4 BY MR. STANFORD:

5 Q At the middle of page 3 after Agent White says,
6 "Acknowledging that you have been personally served with the
7 paperwork," Richard Buswell says, "Not without my lawyer here.
8 I don't understand. I'm not trying to be..."

9 So right there he says he doesn't want to do anything
10 without his lawyer there?

11 A No, no. He did not say he didn't want to do anything. He
12 said he did not want to sign the paperwork. He refused.

13 Q Didn't he also say, "Not without my lawyer here, I don't
14 understand"?

15 A As it relates to the paperwork, yes.

16 Q Okay. At that point, as you said earlier, why didn't you
17 just drop the paperwork off, write "refused" and turn around and
18 leave?

19 A Because he was talking to us. And that's what I had
20 discussed with the U.S. Attorney's Office, if he wanted to talk.
21 If I walked out of that -- if I walked out of that room right
22 there -- again, this was an opportunity to show that, hey, we're
23 not bad guys. We are not the big bad wolf. That would have
24 presented a very bad picture of the federal government.

25 Again, we were laying -- if we had to lay groundwork

1 for later on that he wanted to cooperate. He was saying vile
2 things on the phone about the government. I wasn't going to be
3 rude to him. Honestly, that's the honest truth. Whether he was
4 going to talk or not, I honestly didn't know. My guess was he
5 was, but I couldn't make that decision.

6 Q Okay. At the *Garcia* hearing -- earlier we went over your
7 testimony -- you testified under oath that you were only there to
8 serve the forfeiture paperwork. Do you remember testifying to
9 that?

10 A Yes, the initial reason for us to go there. Without that
11 paperwork, I would not have gone to the jail.

12 Q Well, the same question I asked at the *Garcia* hearing.
13 Wasn't this paperwork that -- you know, I'm not holding you to
14 this, but it's -- we can see today that it's not valid.

15 A I have absolutely no idea if it was valid or not.

16 Q I'm not saying you did, but, according to you, you were just
17 there to serve this paperwork. You testified earlier, you know,
18 something to the effect that you would just walk in and throw
19 down the paperwork. Well, you've had a discussion with
20 Mr. Buswell and he says he does not want to sign. He says, "Not
21 without my lawyer. I don't understand."

22 A Yes. But he indicated he wanted to talk, so it's two
23 separate issues. I didn't want to serve him the paperwork. I
24 asked Alan Haney -- we don't want -- I don't want to have
25 Will White go over there and serve paperwork. I want to serve

1 Barry Domingue or Dan Stanford. Alan Haney told me no. At that
2 point I can't argue with him.

3 Q Well, the reason you went there that day wasn't to serve
4 forfeiture paperwork, but it was for the opportunity to see if
5 you could interview Mr. Buswell about the Curious Goods case?

6 A No. We were going to serve him no matter what.

7 THE COURT: Mr. Stanford, move on to your next
8 question. We've had this one asked and answered at least five or
9 six times.

10 BY MR. STANFORD:

11 Q After Mr. Buswell says, "Not without my lawyer here,"
12 there's one -- on page 5, if you'd turn to page 5, you and
13 Will White continue to try to explain the paperwork to him. On
14 page 5 at the bottom, he says, "I am going to let my attorney
15 sign it. I am uncomfortable with anything anymore. Not with
16 you." And White again says, "You are going to witness me writing
17 refused. Okay?"

18 So he says at least six times before you read him his
19 *Miranda* rights that I am his lawyer, that I represent him, and
20 he's told you at least twice unequivocally he doesn't feel
21 comfortable with you being there?

22 A No. He did not say that he felt uncomfortable with us being
23 there. He did not. He was excited for us to be there, and, in
24 fact, in the interview he asked us if we could stay longer and
25 asked us if we could come back. He also told us we could go

1 search his house if we wanted to. He liked us. We laughed with
2 him. It was very, very casual, but he was certainly at no point
3 in time saying he was not comfortable with us. He was chomping
4 at the bit to talk to Agent White; not necessarily me, but
5 Agent White. He was.

6 Q Didn't you state at the *Garcia* hearing, page 78, line 10,
7 "We went there to serve the paperwork and we told Richard he does
8 not have to say one word to us. That's what we're here for.
9 That is it. Richard, as you probably know, has a full
10 personality and he wanted to talk to us."

11 So having listened to the phone calls and knowing
12 Richard Buswell's personality, the opportunity that presented
13 itself to you and Agent White was you could walk in there with
14 any kind of paperwork. As long as you get in front of Richard,
15 you felt confident that he was going to talk to you and that
16 would be an opportunity for you. Correct?

17 A I believed there was a chance he would talk, yes. There was
18 a chance that he was going to tell us to get out of his face and
19 leave. And when I say "full personality," I mean, he was
20 actually -- he's a funny guy and I knew he was joking around as
21 soon as we walked in there. We were laughing. No matter what,
22 there was a conversation --

23 THE COURT: There's not a question on the table, agent.

24 THE WITNESS: Yes, sir.

25 BY MR. STANFORD:

1 Q Now, at the *Garcia* hearing at page 96, line 4, I was asking
2 you about interviews and whether or not you had generated DEA-6s
3 on those interviews.

4 A Yes.

5 Q And you said, "There are reports, yes." I asked you, "Did
6 you generate a DEA-6 on your interviews with Mr. Buswell?" You
7 said, "I did not." I asked you if another agent did that and you
8 said yes. I asked you if the notes of interview were maintained
9 and you said yes. So did somebody take notes that day?

10 A Notes of the interview?

11 Q Yeah.

12 A I don't think that was necessary. It was recorded.

13 Q Well, my question is, at that point in time when I'm asking
14 you whether or not you had memorialized your encounter with
15 Mr. Buswell, you didn't tell me or notify the Court that it
16 actually had been recorded and there was a recorded three hour
17 and 45 minute version of this interview, did you?

18 A Well, you asked me if it was -- if it was -- if there was a
19 DEA-6 generated and notes were maintained, but I never recall you
20 asking me if it was recorded.

21 THE COURT: I'm going to ask you the specific question
22 because it's bothered me from the moment I found out about this.

23 Why, on the day of the *Garcia* hearing when that
24 question was asked, wasn't Mr. Stanford told that the entirety of
25 this meeting with Mr. Buswell was recorded? Can you answer that?

1 THE WITNESS: I can't.

2 MR. STANFORD: Thank you, Your Honor.

3 BY MR. STANFORD:

4 Q Now, when you left that day, how long after April 5th did
5 you get a copy of the -- or a disc with the audio version of the
6 interview to the U.S. Attorney's Office?

7 A I'm sorry. Repeat that.

8 Q How long after April 5th did you get a copy, you know, of
9 the disc with the audio version of the interview to the U.S.
10 Attorney's Office?

11 A I don't recall exactly the date. It was sometime after
12 that. It could have been within a week. It could have been a
13 little longer.

14 Q By May 14th the U.S. Attorney's Office had a copy of the
15 interview?

16 A Yes.

17 Q And prior to May 14th -- actually prior to you reducing it
18 to a CD, you had notified AUSA Collin Sims that you had
19 approximately a three and a half hour audio conversation of
20 Richard Buswell?

21 A Yes.

22 THE COURT: Did Ms. Uebinger know?

23 THE WITNESS: I believe so, yes.

24 THE COURT: Are we at a good stopping place,
25 Mr. Stanford?

1 MR. STANFORD: Yes, sir.

2 THE COURT: Ten-minute recess.

3 (RECESS)

4 THE COURT: Court will come to order.

5 Wrap it up, Mr. Stanford.

6 MR. STANFORD: Yes, sir.

7 BY MR. STANFORD:

8 Q Agent DeSalvo, did you know that on April 24th -- prior to
9 April 24th that Agent White was going to go to the Iberia
10 Parish Jail again to see Mr. Buswell?

11 A Yes.

12 Q When did he tell you that?

13 A I guess when he spoke to ADA Haney. I don't recall the
14 exact date.

15 Q And do you know why Agent White went to the jail on the
16 24th?

17 A To serve him paperwork.

18 Q Okay. And did you direct Agent White to record that
19 conversation?

20 A No.

21 Q Did you have discussions with the U.S. Attorney about the
22 second -- the April 24th encounter with Mr. Buswell?

23 A I don't believe I did, no.

24 Q Okay. And on April 24th -- I'm going to show you what's
25 already been marked as S-6. The top of that document has

1 "Notice of Pending Forfeiture," and it lists Richard Buswell
2 incarcerated at the Iberia Parish Jail and \$2,000 in a Rayne
3 State Bank account. And I'm going to go to this page. Do you
4 recognize that name at the bottom where it says "I"? Is that
5 Ryan Shanahan?

6 A It could be, yes.

7 Q And, again, on the last page where it says April 24th,
8 2012, it says "Agent Ryan Shanahan"?

9 A Yes.

10 Q Now, on that date when Agent White went to the Iberia Parish
11 Jail, did Agent White tell you that he had a conversation and/or
12 an interview with Mr. Buswell?

13 A Did he say -- I'm sorry.

14 Q Did Agent White tell you that he had a conversation and/or
15 an interview with Mr. Buswell on April 24th, 2012?

16 A What I told him was serve the paperwork and leave.

17 Q After that happened, when he came back did he tell you that
18 he had an interview and a conversation with Mr. Buswell?

19 A I think that he said there was a conversation, and he
20 mentioned something about Richard was trying to tell him
21 something about contraband in the jail or something to some
22 effect like that.

23 Q Did you authorize Agent White to prepare a DEA-6 Report of
24 Investigation on the April 24th incident?

25 A No.

1 Q Do you know if one has been prepared?

2 A I don't believe so, no.

3 THE COURT: Would that be up to his discretion to do
4 it?

5 THE WITNESS: Yes.

6 BY MR. STANFORD:

7 Q On April 24th you were his supervisor, correct?

8 A Yes.

9 Q Is it, I guess, uncommon not to document an interview with a
10 represented person?

11 A Yes. I mean, he said he was doing that. Again, he's doing
12 that on behalf of the direction of the District Attorney's
13 Office.

14 Q Did you talk to Assistant District Attorney Alan Haney about
15 the second service?

16 A I did not.

17 Q Okay. Now, I'm going to show you the Notice of Pending
18 Forfeiture, the caption at the top. It's quite a bit different
19 than the document that you brought -- you and Agent White brought
20 on April 5th of 2012, isn't it?

21 MR. WALKER: Your Honor, I'm going to object to this
22 line of questioning. This witness has already testified he was
23 not in any way involved in this meeting.

24 THE COURT: Mr. Stanford, do you want to respond?

25 MR. STANFORD: Yes. Sorry, Judge.

1 If you look at the caption, you'll see where it has
2 "Notice of Pending Forfeiture." It has the case caption, Richard
3 Buswell, and an asset.

4 MR. WALKER: Again, Your Honor, the document speaks for
5 itself, and the witness has testified he was in no way involved
6 in the service of this document.

7 THE COURT: What's the relevance, Mr. Stanford, as it
8 pertains to this witness and your motion?

9 MR. STANFORD: I'll move on, Judge.

10 THE COURT: Thank you.

11 BY MR. STANFORD:

12 Q I'm going to show you what's been marked as S-3. These are
13 petitions for forfeiture on -- one of them is on the \$19,000, and
14 attached as exhibits are notice of pending forfeitures starting
15 right here with an attached State's exhibit. I'm going to ask
16 you to look at this page, the second to last page of that
17 particular document. It has "Agent Ryan Shanahan," correct?

18 A Yes.

19 Q The last page, "Detective Ryan Shanahan," correct?

20 A Yes.

21 Q Again, the next one, "Detective Ryan Shanahan"?

22 A Correct.

23 Q And right here, "Ryan Shanahan"?

24 A Yes.

25 Q There's another one, "Agent Ryan Shanahan"?

1 A Yes.

2 Q "Agent Ryan Shanahan"?

3 A Yes.

4 Q And some of these, you'll notice that they're being served
5 on Paul Buswell?

6 A Yes.

7 Q Now, you testified earlier that Agent White was the
8 forfeiture -- the guy who was handling all the forfeiture stuff
9 for Curious Goods?

10 A The assets, yes.

11 Q The assets. But on the documents that we have, it shows
12 that but for the April 5th document, every other document was
13 served by Agent Ryan Shanahan who is referenced in the
14 December 8th affidavit as the case agent. Can you explain
15 that?

16 A Yes. What I was told by Captain Vincent was Agent White was
17 to handle that. What they did amongst themselves when they were
18 handling this -- I know for a fact that Agent White was handling
19 the entire asset investigation. He wrote the search warrants.
20 What was told to me as a condition of him coming to be part of
21 the task force was that Agent White was going to continue to
22 handle that.

23 Other than the one instance or maybe two instances
24 where I went with Agent White, that was metro narcotics' issues
25 that I didn't get involved with, but I can attest for a fact that

1 Agent White was the case agent. As told to me or instructed to
2 me by Captain Vincent or Captain Babin, he was to handle the
3 assets in this investigation. My understanding is that's why
4 ADA Haney called him as opposed to Ryan Shanahan. That's my
5 understanding.

6 Q Now, one last topic. At the *Garcia* hearing you testified
7 specifically about tracking assets and/or assets that you
8 believed were being transferred or had been transferred to me
9 personally. Do you remember testifying to those issues?

10 A Yes. I mean, if you could point out in the *Garcia* hearing,
11 I can --

12 Q Yeah. It starts at page 26, line 5.

13 A Yeah. And what I stated was metro narcotics and DEA at this
14 point had a parallel investigation. They were looking for
15 assets, we were assisting them, and they subsequently seized some
16 of these assets.

17 Q But on May 14th in your testimony, you made it -- or you
18 testified that you believed those specific assets, which were two
19 vehicles, a Mercedes car, a Firebird, and a boat and trailer,
20 were being transferred to me. Isn't that true?

21 A Yes.

22 Q Okay. Now, when you testified at the Grand Jury either the
23 first or second time, did you testify as to any of these assets
24 with regards to me?

25 MR. WALKER: I would object, Your Honor.

1 THE COURT: He's not asking specifically. He's asking
2 generally.

3 It's a very narrow question. You got it,
4 Agent DeSalvo?

5 THE WITNESS: I honestly don't recall.

6 THE COURT: All right.

7 BY MR. STANFORD:

8 Q However, whenever you testified at the *Garcia* hearing, you
9 knew from having interviewed Paul Buswell on February 15th of
10 2012 -- at page 56, you asked him about -- at that time you had
11 already taken the Mercedes, but you asked him about it, and
12 Mr. Buswell told you that it was just being parked there because
13 it was unattended at Richard's house, correct?

14 A My statement -- what I based my answer on wasn't just on
15 what Mr. Buswell told me.

16 Q Well, as we went over at the *Garcia* hearing, and I'll just
17 cover it really quickly, there was no evidence or intent on my
18 part to transfer the Mercedes, which is a movable, that you
19 found. Isn't that true?

20 A No. I believe that we had evidence that it was going to be
21 transferred or was in the process of being transferred, and I
22 believe that was based on phone calls, I believe.

23 Q Well, those same phone calls -- I'm glad you brought that
24 up. Wasn't there discussions in the phone calls about the
25 Mercedes being transferred or given to Boyd Barrow?

1 A I honestly don't know.

2 Q Now, by the date that you -- by January 22nd, the date
3 that you came and seized the Mercedes, it had been parked in
4 front of my house next to the street for almost a month; isn't
5 that correct?

6 A Correct. Oh, I don't know if it was parked over or not. I
7 don't know.

8 Q But you found no paper trail evidencing any intent to
9 transfer title to anyone nor the fact that I ever had title to
10 the Mercedes?

11 A No. There was a specific call that I vaguely recall that it
12 was based on that discussed signing what appeared to be to us,
13 not just me, title paperwork. It appeared to be in the process.
14 Metro was looking for assets to seize. And I do recall a phone
15 call indicating that there was actual title paperwork possibly
16 about to be transferred.

17 Q Now, on page 56 and 57 of Mr. Paul Buswell's interview --
18 I'm going to direct you to page 56. And before I move on, do you
19 recall which call -- which specific call and who was discussing
20 the transfer of the Mercedes in that call?

21 A I don't recall. I don't recall. Again, that's based on my
22 memory, which I've been kind of out of the loop for a while, so
23 I'm doing the best I can.

24 Q I'm going to show you a document that was generated by --
25 MR. STANFORD: Am I at S-23?

1 THE COURTROOM DEPUTY: It will be S-24.

2 BY MR. STANFORD:

3 Q Do you know who authored this document? Is it Agent White?

4 A I do not know who authored it.

5 Q But it indicates that on January 23rd, 2012, at
6 approximately 1100 hours, you made contact with Agent White, and
7 this is regarding the speed boat, and shortly after that the
8 speed boat was located at Mr. Brady Becker's residence. Agents
9 were dispatched there.

10 And I believe the essence of the report is that
11 Mr. Becker advised you that he had title of the boat, that he had
12 title to the boat and was in the process of purchasing it from
13 Mr. Buswell for \$30,000, and when the agent said that they were
14 looking to seize it, he turned it over to them immediately.

15 Is that an accurate summary?

16 A Yeah. I'm not sure who authored this. I haven't seen this
17 before. And there were supposedly -- I believe there were two
18 boats that we were looking for as well, so I'm not sure if this
19 was the boat. Supposedly there was another boat being worked on.

20 Q Well, on the February 15th, 2012, interview with
21 Paul Buswell, Paul Buswell tells you that there's another beat up
22 boat that's at his house and you're welcome to come and pick it
23 up whenever you want, but it's basically a dilapidated boat. Do
24 you recall him saying that?

25 A I don't.

1 Q But my point is on this document, that by the time you
2 testified on May 14th at the *Garcia* hearing, you knew that this
3 asset, this boat, was never in the process of being transferred
4 to me?

5 A No. I believe that I thought it was going to be transferred
6 to you. I think that Richard was trying to put some money
7 together to pay you and part of it was his remaining assets which
8 were three items that weren't seized. That was my understanding
9 and that was coming from a variety of sources.

10 Q Well, on January 23rd you spoke to Mr. Becker who told you
11 that he had the boat actually in his possession before
12 December 8th and had agreed to buy it from Mr. Buswell for
13 \$30,000. He had taken possession of the boat. He had the title
14 to the boat. He just hadn't written a check to Mr. Buswell for
15 the \$30,000. Correct?

16 A Yeah. From my understanding there was no transfer of cash
17 or check.

18 MR. STANFORD: I would like to offer, file, and
19 introduce this as S-24.

20 THE COURT: Any objection?

21 MR. WALKER: No objection.

22 THE COURT: Let it be admitted.

23 BY MR. STANFORD:

24 Q And the last -- and I apologize. The top part of this
25 document -- this is just how I got it -- is cut off, but it

1 appears to be some type of search or seizure warrant, and if you
2 can see down here, it's for a 2002 Pontiac Firebird and the VIN
3 number is listed below. Can you see it?

4 A Yes.

5 Q And apparently the location of the vehicle, which is the
6 Firebird, is at Woodvale Avenue, the 400 block, which is
7 Ms. Bonnie Buswell's residence. Would that be accurate?

8 A Yes.

9 Q And the vehicle was located at her residence I think -- it
10 looks like February. On 2/27/12 the vehicle was located in the
11 backyard and soon thereafter agents were dispatched. Were you
12 there with Agent White to retrieve that vehicle?

13 A Yes.

14 Q And the vehicle was retrieved in the backyard, and when you
15 got there, it was apparent that that vehicle hadn't been -- or at
16 least right here it says, on the 28th of February, that the
17 vehicle hadn't been moved in quite a while. Isn't that true?

18 A I don't recall if it had been moved or not. I know it was
19 towed, I think. I remember them starting it up, but my guess is
20 it hadn't been.

21 Q And based on the phone calls from the jail, it was indicated
22 that Richard Buswell didn't want to sell this asset. He didn't
23 want to get rid of it. He wanted to keep the Firebird for his
24 own personal car. Isn't that correct?

25 A No. I recall this was another item that was going to be

1 transferred to you. I think we got that from a phone call, but
2 I'd have to listen to the phone calls.

3 MR. STANFORD: Okay. And I'd like offer, file, and
4 introduce this as S-25.

5 MR. WALKER: No objection.

6 THE COURT: Let it be admitted.

7 BY MR. STANFORD:

8 Q Again, prior to testifying to that at the *Garcia* hearing,
9 you found no tangible evidence, no documentary evidence, say,
10 with the Department of Motor Vehicles, that there had been any
11 title transfers or attempted title transfers, correct, on any of
12 these assets?

13 A No. There was just the phone call, I believe. There was a
14 very specific phone call, I believe, with Ms. Bonnie Buswell that
15 she was -- and I think that was one of our first questions when
16 we went there. I don't recall who asked it. It could have been
17 me or White or Shanahan. That was the title transferred yet and
18 I don't recall her answer, but we had specific information that
19 that was about to be transferred to you. That's to the best of
20 my recollection.

21 Q And you base that on a jailhouse call?

22 A I believe it was a jail call.

23 Q But when you testified on May 14th at the *Garcia* hearing,
24 you testified in a way that would lead this Court to believe that
25 all of these assets that we discussed, there were attempts to

1 transfer those to myself when you knew there had never been any
2 real attempt to transfer any of the three mentioned assets?

3 A It was parked in front of your house.

4 MR. WALKER: I object. The way he phrased the question
5 is argumentative.

6 THE COURT: He can answer the question.

7 THE WITNESS: Yeah. I mean, we thought they were being
8 transferred, and one of the assets, probably the most expensive
9 asset, was parked in front of your house.

10 BY MR. STANFORD:

11 Q And I asked at the *Garcia* hearing do you have any -- first
12 of all, it didn't have a license plate on it, correct?

13 A Correct.

14 Q And weren't you told that someone from Richard's family had
15 drove it there and parked it there where it remained unmoved
16 until you seized?

17 A I don't recall anyone telling me that it was moved by
18 someone from Richard's family.

19 Q Didn't you have a conversation with Paul Buswell about that?

20 A I may have. I don't recall that.

21 MR. STANFORD: That's all the questions I have.

22 THE COURT: Thank you, Mr. Stanford.

23 Mr. Hipwell?

24 MR. HIPWELL: Thank you, Your Honor.

25 THE COURT: I'm confident you're not going to be that

1 long.

2 MR. HIPWELL: I won't, Your Honor.

3 THE COURT: Thank you.

4 CROSS EXAMINATION

5 BY MR. HIPWELL:

6 Q Agent DeSalvo, I direct your attention to the time you
7 testified about your meetings with AUSA Uebinger and Collin Sims
8 before the April 5th, 2012, interview. Okay?

9 A Yes, sir.

10 Q Can you tell us, did the Assistant U.S. Attorneys give you
11 any advice about what to say if Richard Buswell made any mention
12 about his attorney at that interview that you were going to
13 conduct?

14 A About his attorney? Well, the first meeting, the meeting
15 that we had, it wasn't settled there. Mr. Sims conferred with, I
16 think, management within the U.S. Attorney's Office. So once
17 that was decided, as far as his attorney, I don't recall
18 honestly. I don't recall.

19 Q So you're telling us that you do not remember if the two
20 Assistant U.S. Attorneys or anyone else gave you any advice on
21 what to do if Richard Buswell said anything about his attorney
22 while you were asking him questions on April 5th?

23 A His attorney in reference to the securities fraud case?

24 Q No, sir. His attorney in general, Daniel Stanford, who you
25 know was mentioned at least six times by my client before you

1 read him his *Miranda* rights. Isn't that correct?

2 A Right. Well, again, to go back to it, once we dealt with
3 the issue of the forfeiture paperwork, he mentioned Mr. Stanford.

4 Q Can I stop you for a second, sir?

5 THE COURT: Let me interrupt. This is a pretty
6 straightforward question and it's one I'm very interested in,
7 Agent DeSalvo. He wants to know -- and if you don't remember,
8 you don't remember -- were you given any advice by anyone from
9 the U.S. Attorney's Office, any Assistant U.S. Attorney, as to
10 what to say if Mr. Buswell mentioned his lawyer, and the only
11 lawyer in the case at that time, whether the securities fraud
12 case or the Curious Goods case at the state level, was
13 Mr. Stanford.

14 THE WITNESS: Right. I think what was mentioned, any
15 advice, is if he stated he wanted to speak to his attorney before
16 he spoke to us regarding an interview, regarding speaking to him,
17 was for us to end the interview, but not necessarily in general
18 if he brought up his lawyer in reference to the -- and I think I
19 understand your question -- in reference to the forfeiture
20 paperwork. If he brought up his attorney there, I don't recall
21 getting any advice.

22 BY MR. HIPWELL:

23 Q Let me try it this way, Special Agent DeSalvo. You and I
24 will agree, won't we, that after you read him his *Miranda* rights,
25 my client talked to you for over three hours, correct?

1 A Yes.

2 Q We can agree to that, right?

3 A Yes.

4 Q Will you also agree that on six occasions before you read
5 him his *Miranda* rights, he talked about his attorney,
6 Dan Stanford. Would you like me to review every one of them with
7 you or will you admit that?

8 A No, but --

9 Q Will you admit that before the *Miranda* rights were read,
10 that my client mentioned his attorney, Daniel Stanford, on six
11 occasions or do you want to go through them all right now?

12 A In reference to the forfeiture paperwork, yes, he mentioned
13 Dan Stanford, yes.

14 Q Thank you very much.

15 Then one area that I want to cover is you were talking
16 about Will White, I believe, being in charge of asset forfeitures
17 and serving asset forfeiture papers. Isn't it true that he was
18 interviewing people early on immediately after the raids in
19 December, he was actively interviewing people, and the DEA and
20 subsequently the U.S. Attorney's Office received the fruits of
21 those interviews, and that was all part of your investigation
22 that ultimately resulted in these indictments, correct?

23 A Agent White, among numerous agents with metro narcotics, I
24 believe, interviewed individuals subsequent to the arrests in
25 follow-up. Whether that was turned over, I don't know.

1 Q All right, sir. You can only testify about what you know.

2 MR. HIPWELL: Now, Your Honor, I'd like to pose these
3 two questions, but I want to do it to you first and, of course,
4 to the prosecution before you allow whether it would be answered,
5 and this will be covered in the Grand Jury area. It's just two
6 questions.

7 My first question that I would like to ask this agent
8 is if he believed himself at the time of either of his Grand Jury
9 appearances that the Mr. Miyagi product had previously contained
10 JWH-018, but the manufacturers had switched it over to AM-2201.
11 I would like to ask him that. Then I would like to ask him if he
12 told the Grand Jury anything about that and then let the Court,
13 of course, judge as to whether or not we get access to Grand Jury
14 testimony or paperwork because of that. I'd like to ask those
15 two questions, Your Honor.

16 MR. WALKER: As to the first question, whether he
17 believed that Mr. Miyagi contained JWH-018, I don't think that's
18 an inappropriate question. As to the second question about what
19 specifically he told the Grand Jury, I think that's in violation.

20 THE COURT: All right. Do you want to answer the first
21 question? Do you remember it?

22 THE WITNESS: Repeat it, please.

23 THE COURT: Hang on. I'm going to read him what you
24 just told me.

25 Did you yourself believe at the time of either of your

1 Grand Jury appearances that Mr. Miyagi had previously contained
2 JWH-018, but the manufacturers had switched it over to AM-2201?
3 Did you believe that at the time you testified, either time, to
4 the Grand Jury?

5 MR. HIPWELL: And, Judge, before he answers, I do want
6 to restrict it to NutraGenomics and Pinnacle, the factors of this
7 particular case, Your Honor, and not the industry in general.

8 THE COURT: With that qualifier.

9 THE WITNESS: But it's more complicated than that
10 because --

11 THE COURT: No. Before you get to the explanation, I
12 want the answer.

13 THE WITNESS: I don't know. I don't know if that was
14 the case or not, so I guess, no, I didn't necessarily believe it,
15 no, but I don't know for sure because what I did know is the
16 industry in general did go from JWH-018, and once it was banned,
17 they moved to AM-2201.

18 MR. HIPWELL: You see, Your Honor, of course I'm asking
19 the question to know if he said anything about that to the
20 Grand Jury. That would be probably, we will be able to
21 establish, a misstatement in this case as it relates to this
22 case. I think there's a concession on behalf of the government
23 that they have no information that JWH-018 was involved in the
24 Mr. Miyagi product which was sold ultimately to Curious Goods.

25 THE COURT: I understand your position.

1 MR. HIPWELL: Yes, Your Honor. Do I tender on that,
2 Your Honor? I don't get to ask it?

3 THE COURT: Ask your question and let me see if I'm
4 going to let him answer it.

5 BY MR. HIPWELL:

6 Q Did you tell the Grand Jury anything about your -- did you
7 tell the Grand Jury that you believed that JWH-018 had been in
8 the Mr. Miyagi product which was being sold through Curious Goods
9 and that they changed it ultimately to AM-2201?

10 MR. WALKER: And, Your Honor, I object to it. I think
11 it's in violation of Rule 6. It's a very specific question about
12 what was testified in the Grand Jury versus a generic question
13 which you previously allowed the witness to testify to.

14 THE COURT: I'm not going to allow that question. I'm
15 going to change it a little bit.

16 Agent DeSalvo, did you testify to the Grand Jury about
17 JWH-018 or AM-2201 or both?

18 THE WITNESS: Yes.

19 THE COURT: There you have it.

20 MR. HIPWELL: Could I ask for clarification? Was it
21 both, Your Honor, as opposed to just one or the other? I believe
22 the way the Court has asked it, I humbly submit, might be a
23 little bit confusing.

24 THE COURT: It was.

25 MR. HIPWELL: Intentionally so.

1 THE COURT: I have the transcripts, Mr. Hipwell.

2 MR. HIPWELL: I understand. Thank you, Your Honor.

3 I think I tender. Thank you.

4 THE COURT: Mr. Foster, you have not adopted this
5 motion. You wish to speak?

6 MR. FOSTER: Yes.

7 Judge, I had written a letter to the Court seeking
8 permission to inquire of Agent DeSalvo as to the limited point of
9 what pharmacological information he was aware of and imparted to
10 the Grand Jury as a part of his presentation.

11 THE COURT: I could have ruled on that before we
12 started. You're not going to get to ask him that.

13 MR. FOSTER: All right, sir.

14 THE COURT: Mr. Walker?

15 MR. WALKER: Your Honor, previously you kind of joined
16 the defense and you jointly objected to the fact that I was
17 leading the previous witness. I intend to ask narrow questions
18 of this witness so that we're not here, say, through tomorrow.

19 THE COURT: We'll take it question by question. You
20 know the difference. I know the difference. There's not a jury
21 here.

22 MR. WALKER: That is correct.

23 THE COURT: We'll do it this way. Pretend these are
24 your last pennies, Mr. Stanford, on your objections on leading
25 questions, but don't hesitate to spend them if you want to spend

1 them.

2 MR. STANFORD: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. WALKER:

5 Q I'm going to go back through the process leading up to the
6 interview of Mr. Buswell, you and Will White.

7 A Yes, sir.

8 Q First of all, prior to Will White -- or prior to that
9 interview, had you had numerous occasions in which Buswell had
10 said things on recorded phone calls that demonstrated his great
11 desire to speak to you?

12 A Maybe not to me personally, but I think to DEA and to
13 Will White who I think he mentioned by name.

14 Q And so you knew that. Did you choose to act on it any time
15 prior to that?

16 A No, sir.

17 Q You became aware that Alan Haney had requested that
18 Will White serve the state paperwork; is that right?

19 A That's correct.

20 Q What was your position on whether y'all would actually serve
21 him personally?

22 A Well, initially I said that doesn't make sense. Why would
23 we have to do that? Why would you have to do that, Will? I
24 didn't understand the process, so I asked that we call ADA Haney.

25 Q Now, at the time that he was asking to serve the paperwork,

1 the defense kept referring to the fact that there was a criminal
2 case going on in state court. To your knowledge had a criminal
3 prosecution begun in state court?

4 A No.

5 Q And in terms of the forfeiture, had there been a forfeiture
6 action begun in court?

7 A I don't believe so, no.

8 Q Was it your understanding that the paperwork that had to be
9 served was the thing that began the forfeiture process?

10 A Yes.

11 Q You testified previously that you wanted to serve
12 Daniel Stanford rather than Richard Buswell?

13 A And/or Barry Domingue, yes.

14 Q Okay. Specific to Stanford, was there a reason why you
15 would have preferred to serve him?

16 A I don't think I told Haney this, but I think Will White and
17 I had a discussion that if we serve Daniel Stanford, we would
18 have an opportunity to -- Will could have an opportunity to wear
19 a wire and record Mr. Stanford.

20 Q At that point was he, Daniel Stanford, the subject of the
21 criminal investigation related to Curious Goods?

22 A Partly, yes.

23 Q Did you have information that you had collected from other
24 witnesses related to his participation in the criminal activity?

25 A Yes.

1 Q What information did you have?

2 A We had information that he was involved in the RCA in
3 conjunction with Dan Francis. We had information that he had
4 meetings with various individuals relating to this -- the
5 franchise owners.

6 Q Had you been in court during the detention hearing?

7 A I wasn't in court, no.

8 Q Okay. Were you made aware of statements made by
9 Daniel Stanford in the detention hearing?

10 A Yes, I was.

11 Q And did those statements relate to his relationship to the
12 RCA?

13 A Yes. I think he denied being part of the RCA.

14 MR. WALKER: If I could have one moment, Your Honor.

15 THE COURT: Mr. Walker, when you say the detention
16 hearing, there were actually three separate hearings.

17 MR. WALKER: And, Your Honor, I'm speaking of the last
18 detention hearing.

19 THE COURT: The revocation?

20 MR. WALKER: Correct.

21 BY MR. WALKER:

22 Q Do you remember during a *Garcia* -- were you present during a
23 *Garcia* hearing?

24 A Yes.

25 Q Did you testify?

1 A Yes.

2 Q Were you aware that Ms. Uebinger -- the information about
3 the RCA was again brought up at the *Garcia* hearing?

4 A Yes, it was. Yes, I do recall that.

5 Q Was specifically the RCA in Louisiana, the Louisiana RCA,
6 brought up at the *Garcia* hearing?

7 A Yes.

8 Q Did that include the Secretary of State documents which
9 Ms. Uebinger presented to the Court?

10 A Yes.

11 Q Were you aware of what, if anything, Daniel Stanford had
12 said about his relationship to the RCA?

13 A That he wasn't part of that RCA.

14 Q Did you in fact have information to the contrary?

15 A Yes.

16 Q At some point prior to the April interview, were you
17 aware -- did Daniel Stanford become aware, if you know, that DEA
18 was involved in the investigation of this case?

19 A In April?

20 Q Prior to April.

21 THE COURT: Wait, wait, wait. The April interview of
22 who?

23 BY MR. WALKER:

24 Q Prior to the April interview of Mr. Buswell, were you aware
25 that Daniel Stanford knew that DEA was involved in the

1 investigation of this case?

2 MR. STANFORD: I object, Judge. That calls for
3 speculation. How could he know what I know or don't know.

4 MR. WALKER: I'll reask the question.

5 THE COURT: I was going to say you need to rephrase
6 that.

7 BY MR. WALKER:

8 Q Did anything occur to your knowledge in the investigation
9 that would have demonstrated to Daniel Stanford that DEA was
10 involved in the case?

11 A Yes. I believe in the *Garcia* hearing I mentioned that what
12 we were told by witnesses, by individuals, didn't make any sense
13 as it relates to -- it didn't coincide with what Richard Buswell
14 on a certain date stated as it relates to what these witnesses
15 stated. It's kind of confusing, but there appeared to be a
16 turning point shortly after we made it known that we were
17 involved.

18 Q Let me ask you this. You were listening to jail calls after
19 he goes to jail?

20 A Yes.

21 Q And in listening to those jail calls, were there
22 conversations about Daniel Stanford and his relationship to RCA
23 and to this ongoing group?

24 A Yes. And also Mr. Stanford probably realized that we were
25 involved when I was in front of his house next to the Mercedes.

1 We didn't seize that, but I was there. I think that happened in
2 January.

3 Q After that occurred, did you notice a significant difference
4 in the telephone calls and the way Daniel Stanford was discussed
5 in those calls?

6 A Yes. Mr. Stanford was involved -- after the revocation
7 hearing, he was involved with some of the franchisees on getting
8 a new product on the market, and that happened probably early
9 January at least.

10 There were some phone calls between, I think, Bonnie
11 and maybe Paul with Richard discussing the fact that they weren't
12 real happy -- they were trying to get the product back on the
13 shelves. They weren't real happy with Mr. Stanford at that time
14 for not doing -- for doing that.

15 Richard at some point in time shortly in that time
16 frame, shortly after we became involved, stated that
17 Daniel Stanford was never involved in the potpourri business,
18 that he was never a potpourri attorney, was never involved with
19 any of that stuff, which we knew that not to be the case.

20 Q As a result of that, were you concerned about what, if
21 anything, Daniel Stanford might be doing in connection with the
22 investigation of this case?

23 A Yes.

24 Q And after those phone calls had continued, was there still
25 an ongoing investigation?

1 A Yes.

2 Q After Alan Haney told you that he had to be served
3 personally -- wait. Let me back up first. Do you know if --
4 well, first of all, did you go to Alan Haney prior to the service
5 of these documents?

6 A No, sir.

7 Q Did you ask Alan Haney to allow either you or Will White to
8 serve the documents?

9 A No, sir.

10 Q Do you know how it came that Will White was the person that
11 was chosen?

12 A I believe because he was the agent for the assets, handling
13 all the asset matters.

14 Q Federally the only thing that -- the only criminal case
15 related to Richard Buswell was a securities fraud case; is that
16 correct?

17 A Yes.

18 Q When you discovered the matter of Alan Haney and the fact
19 that he wanted personal service on Richard Buswell, you testified
20 previously that you went and spoke to people at the U.S.
21 Attorney's Office?

22 A Yes.

23 Q Did you speak to Collin Sims?

24 A Yes.

25 Q Did you speak to Kelly Uebinger?

1 A Yes.

2 Q Thereafter, are you aware if Collin Sims contacted anyone
3 else at the U.S. Attorney's Office to determine whether it was
4 legal under the Fifth and Sixth Amendment and ethical for him to
5 allow y'all to go talk to him?

6 A I believe he spoke to Bill Flanagan.

7 Q Do you know who Bill Flanagan is at the office?

8 A I believe he's the PRE attorney for ethics. PRE is an
9 acronym.

10 Q It's Professional Responsibility and Ethics?

11 A Yes. He spoke to Bill Flanagan.

12 Q And after he spoke to Bill Flanagan, was there a discussion
13 about what could not under any circumstances be discussed in any
14 way, shape, or form?

15 A Yes, the securities fraud case.

16 Q And after that discussion with Bill Flanagan, was there any
17 discussion about whether you should read him his rights?

18 A Yes.

19 Q And what was the consensus?

20 A To read him his rights.

21 Q And was there any discussion about whether you should record
22 the conversation?

23 A Yes.

24 Q And why was it recommended that you record the conversation?

25 A To protect ourselves. Initially I stated that I would

1 prefer not to record it, and it was brought up that we should
2 record it to protect allegations potentially later, so we went
3 ahead and recorded it.

4 Q When you made that decision in speaking with the
5 U.S. Attorney's Office, was it your decision to go and actively
6 attempt to get him to engage and discuss things about
7 Curious Goods?

8 A I mean, once we were there and he decided he wanted to talk
9 to us, we would listen, and we were interested in part of that
10 investigation, obviously the folks in Georgia, yes.

11 Q When you go to the Iberia jail, do you remember about what
12 time of the day it was? Was it morning or afternoon?

13 A I believe it was afternoon.

14 Q The room that you spoke to him in, was it a small room?

15 A Not a typical jail room. It was a nice size room, like a
16 classroom.

17 Q Did it have numerous chairs in it?

18 A It had chairs, windows. Yes. You access it -- it's where
19 we do our interviews. You don't actually have to go inside the
20 pods. You can access it from an administrative office.

21 Q When he was -- well, in terms of the room, does it have
22 doors?

23 A Yes.

24 Q Multiple doors?

25 A Yes.

1 Q Are they locked or does a person have the ability to go in
2 and out of those doors?

3 A No. Part of it is you can walk in and out. It's not
4 locked.

5 Q When he came in, did he have handcuffs on?

6 A No.

7 Q In your conversation with him, was it an aggressive or a
8 nonaggressive conversation?

9 A It was very nonaggressive.

10 Q Was there ever a time where you and he were -- he and
11 Mr. White were in kind of a heated discussion?

12 A Absolutely not.

13 Q Was the entire conversation recorded?

14 A Yes.

15 Q When you go to the April 24th delivery of paper, did you
16 have anything to do with that?

17 A Other than Will White telling me he was going and he had to
18 serve the paperwork. I just said -- I didn't get involved. I
19 said do what you have to do. Just go -- my recommendation is go
20 and leave.

21 Q And did anybody at the U.S. Attorney's Office get involved
22 in it?

23 A No, sir.

24 Q To your knowledge was anybody at the U.S. Attorney's Office
25 even aware that he was going to serve that second set of

1 paperwork?

2 A I don't believe so, no.

3 Q Was anybody at the U.S. Attorney's Office aware that there
4 was some kind of defect in the first paperwork?

5 A No, I don't think so.

6 Q To your knowledge did you know there was any kind of defect
7 in the paperwork?

8 A No.

9 Q Did you have occasion to read the affidavits that were
10 submitted in connection with the motion to dismiss for
11 prosecutorial misconduct?

12 A Yes.

13 Q And were there two affidavits submitted from Paul Buswell?

14 A Yes.

15 Q I'm showing you -- and I've marked this for identification
16 as United States Exhibit 5. Can you read that document?

17 A Yes, I can see.

18 Q And do you see the first one? It says, "I never told
19 Agent Donald DeSalvo with DEA that my brother, Richard Buswell,
20 wanted to talk to either him or any law enforcement agent about
21 Pinnacle Products or NutraGenomics or anybody else about
22 anything."

23 THE COURT: No. "Or anyone else or anything else."

24 MR. WALKER: Thank you for correcting me.

25 BY MR. WALKER:

1 Q Do you see that?

2 A Yes.

3 Q Is that an accurate statement?

4 A No.

5 Q Now, the defense showed you the transcript of the 15th,
6 and I have a transcript of a portion of the 15th.

7 MR. STANFORD: Before you go any further, can I just
8 ask who transcribed this portion?

9 MR. WALKER: Actually Greg Harbourt transcribed it.

10 BY MR. WALKER:

11 Q Have you had occasion to review United States Exhibit 1?

12 A Yes.

13 Q And is United States Exhibit 1 an accurate transcript of the
14 audio recording?

15 A Yes.

16 Q It's not the entire audio recording; is that correct?

17 A That's correct.

18 MR. STANFORD: And when was this transcribed?

19 MR. WALKER: I don't know the relevance of when it was
20 transcribed. It was transcribed in the last month.

21 BY MR. WALKER:

22 Q Have you had occasion to compare this transcript to the
23 audio recording?

24 A Yes.

25 Q And is it accurate?

1 A Yes.

2 Q First of all, when you look, do you see where there's an RCA
3 in Louisiana and there's the director and co-director? Stanford
4 is the director and Dan Francis is the co-director?

5 A Yes.

6 Q That was a statement he made to you -- Paul Buswell made to
7 you on 2/15 of '12?

8 A I believe that's me making that statement.

9 Q That's true. And how did he respond?

10 A I believe he agreed.

11 Q In connection with him asking the question about whether
12 he's going to talk -- I'm sorry. Let me move it up a little bit.
13 "Let me ask you this. Not saying it's going to happen. Would
14 Richard be willing to talk about this?" Do you see that?

15 A Yes.

16 Q And what was Paul Buswell's response?

17 A He said, "I would think so."

18 Q On the 16th was there a subsequent interview?

19 A Yes.

20 Q And in the subsequent interview --

21 MR. STANFORD: Judge, before we go any further, I'm
22 going to object to this being admitted. And I've talked to other
23 defense counsel. We don't have a February 16th, 2012, recorded
24 interview between Paul Buswell and Will White and Don DeSalvo.

25 MR. WALKER: And I was concerned about that when he

1 mentioned that previously. If I could have one moment,
2 Your Honor.

3 (CONFERRING)

4 MR. WALKER: Your Honor, having spoken to the chief of
5 the criminal division, Richard Willis, what he informed me, his
6 conversation with Laura Bourque, is that on March 22nd a CD was
7 provided to the defense which had 11 recordings. They've gone
8 through and listened to the 11 recordings, and at this moment
9 Laura Bourque cannot absolutely verify that this is on the
10 recording. It was my belief that it's on the recording and that
11 they had a copy of it, but Ms. Bourque can't verify it at this
12 time.

13 THE COURT: I'm not going to let you ask any questions
14 about that until we get the answer to that.

15 MR. STANFORD: Judge --

16 THE COURT: Wait. Don't stand up yet.

17 And if it is on there, we will recess until the defense
18 have had an opportunity to look at the transcript of that
19 recording, and if they have any questions about it, then they
20 will get the recording and we'll come back.

21 MR. WALKER: Thank you, Your Honor.

22 THE COURT: All right. Satisfactory, Mr. Stanford?

23 MR. STANFORD: Yes, Judge. I also wanted to note for
24 the record -- I've had this discussion with Mr. Walker via
25 e-mail -- that there are two or three discs that we've received

1 that we can't open up because it's encrypted, and it's either --
2 we don't know how to open it up. We've tried to work with Laura
3 and with Erol Catalan. And that's still kind of a pending issue,
4 so I don't know if this is on one of those discs.

5 MR. WALKER: And it's not encrypted. What it is, for
6 some reason -- I had Mr. Catalan speak to Mr. Stanford's legal --
7 I guess it's his secretary or legal assistant, and we've gone
8 through the process of what you have to do to open it up. I
9 can't explain why they can't open it up because we've gone back
10 and reopened them to make sure that they work. It is our
11 intention to have Erol Catalan just go to their office and sit
12 with the person so that he can open it up with her. We can't
13 explain why it won't open up.

14 THE COURT: I had the same problem in my office the
15 other day, so I understand your pain, Mr. Stanford, but if you
16 don't get the relief that you're asking for, let me know.

17 MR. STANFORD: Thank you, Judge.

18 BY MR. WALKER:

19 Q You do know that there was a second conversation on the
20 16th?

21 A Yes.

22 Q In the second conversation on the 16th, do you have an
23 independent recollection of what was or was not said?

24 A Yes.

25 Q What, if anything, was said about whether Richard Buswell

1 would want to speak to agents of the Drug Enforcement
2 Administration or either Will White or yourself?

3 A He said that he wanted to speak to us specifically about
4 Boyd Barrow and Josh Espinoza and Pinnacle Products.

5 Q During the conversation on the 15th, was there -- in one
6 of the affidavits there was mention of the fact that money was
7 paid to -- or was not paid to Daniel Stanford by Paul Buswell.
8 Do you remember that in the affidavit?

9 A Yes.

10 Q Did you have occasion to go back and look at the recording
11 of February 15th, 2012?

12 A Yes.

13 Q And I'm showing you the second page of United States
14 Exhibit 1, and it says -- first of all, this is an accurate
15 representation? Is it accurate, the transcript?

16 A Yes.

17 Q It says, "Did you pay him any amount of money?" And
18 Paul Buswell said, "I never did." And you said, "Daniel? Or
19 hand him any type of money or anything?" "Uh, Dan, yeah." That
20 was Paul Buswell. You responded, "Dan Francis?" He said, "No,
21 no, I never paid Francis." "Dan Stanford?" "Correct." "What
22 did you pay Dan Stanford for?"

23 A Yes. And he said, "Uh, well, I gave him money, and a lot of
24 that helped for bail and with everything else for the retainer."

25 Q "For the retainer for?" What was his response?

1 A "From what I understand, the criminal case." "The criminal
2 case that's moving forward or the criminal case with your
3 brother?" That was my question. "The case moving forward, you
4 know, from my knowledge." "How much money?" "Let me get with
5 him before (he laughs) I tell you anything."

6 MR. WALKER: Your Honor, in connection with the
7 testimony, I would offer into evidence United States Exhibit 1.

8 THE COURT: Any objection?

9 MR. STANFORD: No objection.

10 THE COURT: Mr. Hipwell?

11 MR. HIPWELL: No, Your Honor.

12 THE COURT: Without objection, let it be admitted.

13 BY MR. WALKER:

14 Q On February 16th of 2012, was the matter of money brought
15 up in that conversation with Paul Buswell?

16 A Yes.

17 Q And did he say how much money had been paid for the retainer
18 and for bail?

19 A He indicated \$80,000.

20 Q And did he say when he had given that money?

21 A I think it was the day of the search warrants, December
22 the 8th.

23 Q And during the conversation, did he say where it was given?

24 A I believe Mr. Stanford's office.

25 Q And did he say why it was given?

1 A Yeah. He was a little guarded in the first interview. The
2 second interview he opened up slightly and said that it wasn't
3 his wishes for that money to be used for the bail and for the
4 retainer, that in fact what I believe he said was individuals
5 were realizing that their money was being seized by the
6 government, the state or federal. They weren't sure. And that
7 Mr. Buswell had monies, life savings stashed somewhere. I don't
8 know where. He went and got the money, came back, and basically
9 said his intention was to, in so many words, hide the money from
10 the government to keep it safe and that it was used later, that
11 that wasn't his intention for it, that it was used to pay
12 Mr. Stanford and to pay bail money.

13 Q Did he say anything about the fact that accounts were being
14 frozen?

15 A Yes. And we had information about that from other
16 witnesses, that they were in Mr. Stanford's office or in the
17 lobby area checking their bank accounts and they started to
18 realize that the bank accounts were frozen, so he started to
19 somewhat panic, Mr. Buswell, is my recollection.

20 Q During the conversation when he was talking to y'all, the
21 second conversation, did he say that he had physically directly
22 handed the money to Daniel Stanford or to somebody else?

23 A He said -- my recollection is -- I think he said his -- my
24 impression was he gave it to Mr. Stanford and then I think he
25 clarified that he handed it over to -- he said he handed it over

1 to Barry Domingue first, but he made it clear that Mr. Stanford
2 was the recipient.

3 Q And that all occurred on the day of the raids at
4 Daniel Stanford's office?

5 A Yes.

6 Q Have you had occasion to listen to jail phone calls both
7 between Paul Buswell as well as Bonnie Buswell, the mother of
8 Paul and Richard Buswell?

9 A Yes.

10 Q And in those conversations are there discussions about the
11 fact that the money was turned over to Daniel Stanford and that
12 Paul wasn't happy about it?

13 A Yes.

14 Q Were there also discussions about the fact that Paul Buswell
15 had confronted Daniel Stanford about the money?

16 A I believe so, yes.

17 Q When you look at United States Exhibit 6, which is the
18 second affidavit that was attached --

19 MR. WALKER: And I'm offering this into evidence as
20 United States Exhibit 6.

21 THE COURT: Any objection, Mr. Stanford?

22 MR. STANFORD: No, sir.

23 THE COURT: Mr. Hipwell?

24 MR. HIPWELL: No, sir.

25 THE COURT: Let it be admitted.

1 BY MR. WALKER:

2 Q The first paragraph of the affidavit says he had never
3 given -- delivered or given or asked Daniel Stanford individually
4 or in his capacity as a lawyer to hold any U.S. currency or
5 anything of value for me nor have I ever asked him to hold
6 anything of value, including U.S. currency, in his trust account
7 or any other account; is that correct?

8 A That's what it says, yes.

9 Q And what does the second one say?

10 A As a businessman I would never deliver or give U.S. currency
11 or anything of value to an attorney without first requesting and
12 receiving a receipt in return.

13 Q So based on the affidavit, either Daniel Stanford would have
14 given him a receipt or Barry Domingue would have given him a
15 receipt based on what he said?

16 A Based on what he said, yes.

17 Q And have you received a receipt reflecting that he gave
18 either of those people money?

19 A No, sir.

20 Q You testified previously -- and I'm only going to touch on
21 this very briefly. When Will White -- when you first were
22 bringing Will White in to DEA, before that Kane Marceaux had been
23 there; is that correct?

24 A Yes, sir.

25 Q Had he been with y'all for a while?

1 A Yes.

2 Q And had you had a good working relationship with him?

3 A Yes.

4 Q When he was removed, was that something that y'all weren't
5 happy about?

6 A That's correct.

7 Q Did y'all need to get somebody to replace him if possible?

8 A Well, at some point in time I didn't think they were going
9 to replace him because we had some issues, some serious issues
10 between our agencies, and we requested that he be replaced, yes,
11 and they told us they'd get back with us.

12 Q And at some point did you negotiate to get Will White to be
13 placed on the task force?

14 A Well, that was my preference, but I was told that it would
15 be a person of their choosing.

16 Q Did you agree to a concession in return for him working with
17 y'all?

18 A Yes. They had stated that they would send him, but he would
19 remain working the asset part of the investigation, that he was
20 there from the beginning. They said that he would have to
21 continue to work that and if I would agree to that. I said I
22 would.

23 Q When you deliver -- typically when you deliver this
24 forfeiture paperwork, is that typically something that two people
25 do or is that something that maybe one person will go do or do

1 you know?

2 A As it relates to the state case, I don't know. I assume now
3 that I've seen this and I see a witness -- there's obviously a
4 part for the witness. Can it be done without a witness? I don't
5 know.

6 Q Okay. Your understanding was, though, that Will White was
7 the person primarily responsible for resolving it?

8 A Yes. That's what Agent White told me and that's what his
9 supervisor at the police department told me.

10 Q The defense asked you about a letter to the Attorney General
11 and he discussed apparently a letter that was sent to the
12 Georgia Attorney General. Do you remember Mr. Stanford asking
13 you questions about that?

14 A Yes.

15 Q Did you have a conversation with Boyd Barrow about specific
16 conversations he had had with Daniel Stanford?

17 A Yes.

18 Q And what, if anything, did Boyd Barrow tell you about this
19 letter to the Attorney General?

20 A I mean, he told me that Mr. Stanford represented that he had
21 a letter from the Attorney General. Mr. Domingue also told me
22 that.

23 Q At some point was Mr. Stanford confronted about they want to
24 see that letter?

25 A Yes, I believe so.

1 Q And what, if anything, were you told? How did
2 Mr. Daniel Stanford respond to that?

3 A That he had a phone call with a representative from the
4 Attorney General's Office as opposed to a letter.

5 Q He was claiming in the phone call and in the letter that he
6 had a conversation with them in which they agreed that AM-2201
7 wouldn't be prosecuted under state law?

8 A Yes, something to that effect, that they were not going to
9 be held liable criminally based on that, but the specifics of the
10 letter, I don't know if I have that.

11 Q Because you never actually saw the letter?

12 A Because I never saw the letter.

13 Q Because it didn't exist?

14 A Correct.

15 Q Did Barry Domingue in his conversation with you talk about
16 the fact that Daniel Stanford had told him he had a letter?

17 A Yes.

18 Q Did he in fact tell you about a text that he had from
19 Stanford about the letter?

20 A I don't remember if he said he had a text, but I do recall
21 stating that he was fully aware that Mr. Stanford had stated he
22 had a letter, and I believe Mr. Domingue said he confronted him
23 about it at some point in time. Whether it was a text or not, I
24 don't recall.

25 Q Was there any confusion about which Daniel Stanford he was

1 talking about?

2 A No.

3 Q Was it the Daniel Stanford involved in this case?

4 A Yes, sir.

5 Q The defense talked to you about forfeiture in connection
6 with the other participants in this case. You're aware that
7 Mr. Green pled guilty?

8 A Yes.

9 Q Did he forfeit a condominium and a vehicle?

10 A I believe so, yes.

11 Q Was it also, as part of the plea, that he would have to
12 forfeit all the proceeds of his criminal activity that we could
13 find?

14 A Yes.

15 Q As a result of that, was Greg Harbourt given the duty of
16 attempting to find assets that we can forfeit?

17 A Yes.

18 Q When Mr. Malone pled guilty, did he have the same plea as it
19 relates to forfeiture?

20 A Yes.

21 Q Now, the defense brought up 13, 14, and 17. Could I see
22 those three exhibits? I can actually get my copies if you don't
23 have yours.

24 Do you recognize seeing those documents before?

25 A Yes.

1 Q And do those documents relate to monies that were
2 transferred directly or indirectly to Boyd Barrow?

3 A Yes.

4 Q After --

5 THE COURT: Directly or indirectly or both?

6 THE WITNESS: Well, I think some of them say
7 Jimmy Barrow, but we believed it was Boyd Barrow's.

8 BY MR. WALKER:

9 Q Was that his dad?

10 A Yes.

11 Q So to your knowledge was money that was proceeds of the drug
12 trade, was part of what Boyd Barrow got he transferred over to
13 his mother and father?

14 A Yes.

15 Q And is that the documents, the Regions Bank documents?

16 A Yes.

17 Q After we went forward with the prosecution, the
18 investigation and prosecution of Boyd Barrow as part of that, did
19 we have occasion to seize assets from the accounts of Boyd Barrow
20 as well as the other Regions Bank?

21 A Yes.

22 Q Approximately \$300,000?

23 A Yes, sir.

24 Q And the fact that he transferred the money to his father,
25 that didn't cause it to escape us seizing it; is that correct?

1 A That's correct.

2 Q So we seized his money as well as the money that he
3 transferred to other parties?

4 A That's correct.

5 Q And overall in connection with this case, whether people
6 plead guilty or go to trial, is there a rule that we have in
7 connection with what, if anything, we're going to do with the
8 assets that they have obtained as a result of the criminal
9 activity?

10 A Seek seizure and forfeiture.

11 Q The defense brought up the fact that there were other
12 lawyers out of -- I believe one was out of New York State that
13 had received money from another group; is that correct?

14 A Yes.

15 Q In order to seize it, we have to be able to show that
16 they're not an innocent third party. Is that your understanding
17 of the law?

18 A Yes.

19 Q And were we able to do that to your knowledge?

20 A I don't believe so.

21 Q Are you aware of Greg Harbourt -- during the defense's
22 direct examination, there were conversations about the RCA dues
23 that were paid?

24 A Yes.

25 Q And specifically those collected prior to November 25th of

1 2011; is that correct?

2 A Yes.

3 Q I show you what's been marked for identification as
4 United States Exhibit 3. Do you see the "Dan Stanford" and,
5 right before, the bolded "Dan Stanford"? Do you see that?

6 A Yes.

7 Q Do you see, first of all, if the check had a memo on it?

8 A Yes.

9 Q And what did the memo say?

10 A RCA dues.

11 Q And the amount?

12 A \$6,250, the first one. The second one, \$12,500.

13 Q Does it show who the payer of the \$6,250 was?

14 A Yes. Pinnacle Products.

15 Q And the \$12,500?

16 A Curious Goods.

17 Q And based on your interviews with witnesses, did you
18 understand that they were paying Daniel Stanford the RCA dues?

19 A Yes.

20 MR. WALKER: I would offer into evidence United States
21 Exhibit 3.

22 THE COURT: Any objection?

23 MR. STANFORD: No objection.

24 THE COURT: Mr. Hipwell, any objection?

25 MR. HIPWELL: No, Your Honor. Thank you.

1 THE COURT: Okay. Without objection, let it be
2 admitted.

3 BY MR. WALKER:

4 Q The defense brought up the fact that during the *Garcia*
5 hearing you were asked questions about whether y'all had done a
6 DEA-6 of the interview of Richard Buswell.

7 A Yes.

8 Q And also --

9 THE COURT: Which one?

10 MR. WALKER: The *Garcia* hearing, and it would be the
11 Richard Buswell interview of April the 5th.

12 BY MR. WALKER:

13 Q And your response to that was no; is that correct?

14 A That's correct.

15 Q And was that accurate?

16 A Yes.

17 Q And they asked about notes and you said you didn't know,
18 correct?

19 A Yes.

20 Q And was that accurate?

21 A Yes.

22 Q The defense asked you questions about --

23 A Well, I think what I said was that it was recorded.

24 Q Correct. You say it was recorded, but you didn't say it was
25 recorded at the *Garcia* hearing; is that correct?

1 A Right. My understanding was -- and generally Mr. Stanford
2 has asked me this before. They ask if you've done a DEA-6.
3 Usually we accompany our handwritten notes with a DEA-6. That
4 was my understanding of what he was asking.

5 Q But you didn't have any notes and you didn't have a DEA-6;
6 is that correct?

7 A That's correct.

8 Q At that moment was there an ongoing investigation of which
9 Daniel Stanford was the subject?

10 A Yes.

11 Q If you had been asked directly if it was recorded, what, if
12 anything, would you have said?

13 A That it was recorded.

14 Q Because in fact it was recorded?

15 A Yes.

16 Q Getting that information to Daniel Stanford, what effect, if
17 any, would it have had in your ongoing investigation of which he
18 was the subject?

19 A It would probably have hampered the investigation.

20 THE COURT: Let me interrupt you right there. What
21 about the status of the investigation as to the folks from
22 Georgia, Mr. Green, Mr. Malone, Mr. Reece?

23 THE WITNESS: The overall investigation, yes.

24 THE COURT: That wasn't out there at that time? You
25 were in the middle of that?

1 THE WITNESS: No. We hadn't even decided who was going
2 to be indicted or anything like that. It was an ongoing
3 investigation. We were in communication with Georgia and we were
4 concerned about many things.

5 BY MR. WALKER:

6 Q And that recorded conversation, essentially if you had to
7 turn that over, you would have been turning it over to a subject
8 of the investigation and you would have been essentially
9 potentially telling the other subjects of the investigation
10 around the United States that they were also being targeted by
11 the DEA?

12 A Yes.

13 THE COURT: Do you remember when the recorded statement
14 was given to Mr. Hipwell?

15 THE WITNESS: I didn't give it to him. I turned it
16 over to the U.S. Attorney's Office. I'm not sure. I don't know.
17 It wasn't given by me, so...

18 THE COURT: Do you know if it was before or after the
19 superceding indictment was issued?

20 THE WITNESS: I don't know. I thought it was before.

21 MR. WALKER: And Mr. Hipwell has just whispered behind
22 me, "I think he's right."

23 THE COURT: He's nodding.

24 MR. HIPWELL: He is, Your Honor.

25 THE COURT: Mr. Foster, on the other hand, is there

1 with his head down.

2 MR. WALKER: He doesn't want to answer.

3 BY MR. WALKER:

4 Q So in connection with the two affidavits that you had
5 occasion to read from Paul Buswell that were submitted, in each
6 of the affidavits, were there statements that were factually
7 inaccurate?

8 A Yes, sir.

9 Q And is that based on the interviews that you had with
10 Paul Buswell?

11 A Yes.

12 Q Is it also based on the phone calls in which he specifically
13 discussed that with other members of his family?

14 A Yes.

15 Q And is it also demonstrated to be inaccurate based on the
16 fact that other members or other co-conspirators who have
17 subsequently been interviewed have also verified the payment of
18 the money?

19 A Yes.

20 MR. WALKER: Could I have one moment, Your Honor?

21 THE COURT: You may.

22 (CONFERRING)

23 MR. WALKER: That's all I have, Your Honor.

24 THE COURT: Redirect?

25 MR. STANFORD: Yes, sir.

1 THE COURT: Briefly, Mr. Stanford. Ms. Bourque is
2 tired.

3 REDIRECT EXAMINATION

4 BY MR. STANFORD:

5 Q The first thing I want to clear up is what Mr. Walker said
6 about the December -- I guess December 15th, the last hearing
7 or the revocation hearing. There was a discussion about the news
8 report from November 8th and --

9 MR. WALKER: I object, Your Honor. I didn't mention
10 anything about a news report.

11 MR. STANFORD: I'm just trying --

12 THE COURT: He's saying that's what happened at the
13 revocation hearing. There was a discussion about the news
14 report. I remember that.

15 BY MR. STANFORD:

16 Q And I think Ms. Uebinger was saying that I was -- the news
17 report -- and I'll show you what I've marked as S-26. It has
18 been introduced before in court where it talks about
19 representatives from the Retail Compliance Association told us.

20 The issue, as I understood it, was whether or not I
21 was -- I had formed the Retail Compliance, the Louisiana version,
22 by November 8th, and I had stated that based on the Articles of
23 Incorporation, it wasn't formed until November 28th, that this
24 was a different -- there were two different RCA organizations,
25 which you testified to earlier; isn't that correct?

1 A That's not correct. There was -- like I said before, there
2 was a combination of those Retail Compliance Associations. I
3 spoke to the news reporter. The news reporter said you contacted
4 him as a representative from the RCA. That was my understanding.

5 Q Well, didn't the news reporter also tell you that
6 Dan Francis -- that I asked Dan Francis to contact
7 Doug McDermott, the reporter, when he asked specific questions
8 that I couldn't answer and that Mr. Francis did in fact contact
9 him and talk to him?

10 A He didn't state that regarding things that he couldn't
11 answer. He stated that you contacted him and then follow-up
12 conversations was when Mr. Francis contacted Mr. McDermott.

13 Q But on the date of this report, November 8th, the
14 Louisiana RCA had not been formed, correct?

15 A You were receiving news from the RCA.

16 THE COURT: Wait, wait. We have the document in
17 evidence, Mr. Stanford. I know when the date was. You don't
18 need to keep asking him that.

19 MR. STANFORD: Okay. I would just offer, file, and
20 introduce this as S-26.

21 THE COURT: This is the news report?

22 MR. STANFORD: Yes.

23 THE COURT: Any objection, Mr. Walker?

24 MR. WALKER: Can I see it?

25 THE COURT: It's the same one that everybody keeps

1 showing me that, frankly, I don't think has that much relevance.

2 MR. WALKER: I don't have any objection.

3 THE COURT: Let it be admitted.

4 BY MR. STANFORD:

5 Q Now, on the transcript that Mr. Walker was referring to, the
6 February 15th, 2012, recording of Paul Buswell, Paul Buswell
7 never says that he gave Daniel Stanford money. He says, "Uh,
8 well, I -- I gave money and a lot of that helped out for bail and
9 with everything else for the retainer." Paul Buswell never told
10 you that he gave me money directly, did he?

11 A Yes, he did.

12 Q When?

13 A He stated that -- our conversations, most of it occurred on
14 the 16th. He said he gave you money.

15 Q And I thought you said on the 16th he indicated that he
16 gave Barry Domingue money?

17 A Well, he passed money to Domingue who then passed it to
18 Stanford is my understanding.

19 Q My question was specific. Paul Buswell never told you that
20 he gave me money directly, he handed me money, did he?

21 A Our conversations were --

22 THE COURT: Wait. You need to answer it first.

23 THE WITNESS: I would have to look at the transcript on
24 the 16th. On that on the 15th, he was very limited on what
25 he discussed with regard to handing the money over or giving the

1 money. We had information from other witnesses that stated that
2 they observed the money being handed over. I believe we
3 mentioned that. I'm not sure 100 percent. We initiated the
4 subject on the 15th. On the 16th he went into more detail.
5 And there was no -- from all three of us, there was no -- it's
6 very clear that one person received the money and it wasn't Barry
7 Domingue who received the money. Was it handed? I don't know.
8 Who was handed it first? I don't know.

9 BY MR. STANFORD:

10 Q Okay. You said that you had some witnesses who said that it
11 was -- that he handed over the money to me. Which witnesses said
12 that?

13 A There were two witnesses.

14 Q Who are they?

15 A Johnny Cospers and Josh Espinoza.

16 Q Okay. Can I direct your attention to the *Garcia* hearing
17 transcript at page 27.

18 A Okay.

19 Q At lines 2 through 15. Probably line 11. This is you
20 testifying at the *Garcia* hearing. "So Paul Buswell made a
21 statement that he had some money, and I believe that his wife
22 retrieved the money, returned back to the office, and Mr. Buswell
23 said he didn't know what to do with it. It was a large sum of
24 cash. One person told --

25 THE COURT: Slow down.

1 BY MR. STANFORD:

2 Q "One person told me \$100,000. Paul told me \$80,000. And he
3 said he asked what could he do with it, and Mr. Stanford said, I
4 can put it in my trust account and keep it safe, and according to
5 Paul Buswell, he handed it over."

6 Now, Paul Buswell never told you that, did he?

7 A And I didn't say he did, not that -- what you put in that
8 affidavit for Paul to sign was a --

9 Q I'm talking about your testimony.

10 A Yeah. My testimony -- Ms. Uebinger asked me, "Did you speak
11 to various individuals who were present at the meeting?" "Yes, a
12 few of them." And I did, Johnny Cosper for one, Josh Espinoza,
13 Boyd Barrow, various -- well, at that point it was Johnny Cosper.
14 We did speak to Barry Domingue as well.

15 And her question was, "Did Daniel Stanford take
16 possession of a large sum of money at that meeting?" "Yes." At
17 that point I don't state that Paul Buswell told me that. I'm
18 basically telling her what these individuals were telling me, and
19 I'm describing Boyd Barrow was there and Josh Espinoza at the
20 point they realized their assets were frozen, that there was a
21 search warrant and that the assets were seized, some of the
22 Pinnacle accounts and some of Curious Goods' accounts.

23 So Paul Buswell made a statement -- I'm not saying Paul
24 made that statement. I'm stating that -- the story I'm telling
25 is from a number of people, that he had some money and he asked

1 his wife to retrieve the money. He returned back to the office
2 with a large sum of cash. Again, a number of people are telling
3 me this. One person told me \$100,000. That was Johnny Cospers.
4 Then I clarify and I say, "Paul told me in our interview that it
5 was \$80,000."

6 Again, I go back in to what everyone was telling me
7 because Johnny Cospers specifically stated he asked what he could
8 do with it. Now, in there I didn't clarify that it was
9 Johnny Cospers, but that's what it was, and he stated -- Cospers is
10 the first person that told us that the trust account was offered
11 and to keep it safe. When we went back to talk to Paul, that's
12 what he stated, that his intention was to keep it safe, so it
13 made sense to us, and then at the end I state that Mr. Buswell
14 handed it over.

15 Q Well, I'll just read the last sentence verbatim starting
16 with, "Paul told me \$80,000." That was your testimony. "Paul
17 told me \$80,000, and he said that he asked what he could do with
18 it and Mr. Stanford said, I can put it in my trust account and
19 keep it safe, and according to Mr. Buswell, he handed it over."
20 Not Mr. Cospers, Mr. Buswell.

21 A No. What I said here, my testimony here, is from a number
22 of people. I clarified a few things that Paul stated. No one
23 came back and asked me to clarify. I wasn't -- I was telling a
24 story from what the question was, "And did you speak to various
25 individuals who were present at the meeting?" "Yes, a few of

1 them." "To your knowledge." My knowledge, I told the story.
2 Should I have clarified what each and every person told me? I
3 wasn't asked. I don't think I was even asked any question by
4 you, Mr. Stanford, in this regard, and you could have easily said
5 who said what. I was never asked. I don't think the subject was
6 broached by you.

7 Q Well, this is on direct examination with Ms. Uebinger.

8 A And I'm saying after the fact it was not -- I was not asked
9 to clarify anything.

10 Q Well, that's not what's on the table. What is is what you
11 said.

12 A And I'm saying I told a story.

13 THE COURT: All right. Y'all are arguing. I know what
14 the point is. Move on.

15 MR. STANFORD: Yes, sir.

16 BY MR. STANFORD:

17 Q You said that Boyd Barrow told you that I supposedly told
18 him that I had a letter from the AG?

19 A That there was a -- there was something from the AG.

20 Q Well, in your July 19th, 2012, interview of Boyd Barrow at
21 Tim Meche's office, Boyd Barrow specifically talks about his
22 lawyer or friend, Jim Peters, contacting the Attorney General's
23 Office in Georgia?

24 A Yes, but there's also an AG in Louisiana that was contacted
25 is what we were told.

1 Q That's not in -- I only have what I have in discovery. Did
2 you do a DEA-6 of the interview that contains this information?

3 MR. WALKER: Objection.

4 THE WITNESS: I didn't, no, sir.

5 THE COURT: Okay. When he stands up to object, you
6 don't answer.

7 THE WITNESS: Yes, sir.

8 MR. WALKER: And actually he's answered, so I withdraw
9 it.

10 BY MR. STANFORD:

11 Q Isn't it true -- answer if you know, but the
12 April 5th recorded interview was turned over to Mr. Hipwell in
13 July of 2012 shortly after I was removed from Mr. Buswell's case,
14 correct?

15 A I didn't turn it over to him. I don't know who did and the
16 dates. We turned it over to the U.S. Attorney's Office.

17 Q And by August 20th -- well, prior to that -- by
18 August 20th Judge Haik had issued a ruling ordering a rehearing
19 on the *Garcia* matter and basically got the newly produced
20 evidence, the audiotape. Are you aware of that?

21 A I mean, I'm not. That may have been the case.

22 THE COURT: When was the original indictment in this
23 case handed down?

24 MR. STANFORD: May 18th.

25 THE COURT: All right. And when was Mr. Hipwell

1 appointed to Mr. Buswell's representation after the original
2 indictment?

3 MR. STANFORD: I think he was kind of provisionally
4 appointed during the *Garcia* process, Judge.

5 MR. WALKER: That is correct.

6 MR. STANFORD: What I understood is he wanted
7 Mr. Buswell to have separate counsel to discuss conflict issues
8 and whatnot.

9 MR. HIPWELL: I was there for the conflict, Your Honor.
10 I believe the Court was away, and I believe Magistrate Judge Hill
11 appointed me on the Curious Goods case on a week that you were
12 out, Your Honor.

13 THE COURT: All right. And did you get the recorded
14 interview after that appointment or before the superceding?

15 MR. HIPWELL: It was definitely before the superceding.
16 It was sometime that summer. I believe Ms. Uebinger and
17 Collin Sims both together arranged to get that to me pretty
18 quickly, yes, sir.

19 THE COURT: All right. Thank you.

20 BY MR. STANFORD:

21 Q So if Mr. Hipwell would have had had that in July, the
22 summer prior to the superceding indictment, apparently that
23 didn't inhibit or affect the investigation, did it? Do you have
24 any information that it did?

25 A I think we had an indictment at that point.

1 Q Did you have the indictment in July, the superceding
2 indictment?

3 A No. In September, I believe.

4 Q Right. If the transcript -- or if the audio was turned over
5 in July, you don't have any information that the turning over of
6 the transcript affected your investigation in any way, do you?

7 A Well, in July is when we conducted the nationwide takedown
8 Operation Log Jam, so at that point it would be a moot issue.
9 Everyone knew that we were involved because we executed about 500
10 search warrants and arrested a number of people. The case was
11 exposed.

12 Q Did you have conversations with Paul Buswell where you asked
13 him -- or you told him that you would rather meet with his
14 brother, Richard Buswell, without his lawyer, Daniel Stanford,
15 being present, otherwise, it would be a waste of time and you
16 would just be -- and I'm quoting -- spinning your wheels?

17 MR. WALKER: I object, Your Honor. It's beyond the
18 scope of cross examination.

19 MR. STANFORD: He introduced this affidavit which has
20 that information in it.

21 THE COURT: Answer the question, please.

22 THE WITNESS: I mean, if I said that, I haven't -- I
23 don't know if I used those exact words. What I told Paul Buswell
24 was that obviously there was a conflict based on what he was
25 telling us about -- I'm not saying that this conflict would be

1 ruled upon or anything like that, but that it would be hard for
2 us to talk to him with you there because there was -- potentially
3 both of you guys were witnesses in the same case.

4 BY MR. STANFORD:

5 Q And on my alleged involvement in trying to get potpourri
6 back on the shelves, the jailhouse calls that you were monitoring
7 evidenced that Paul Buswell was upset because I was not doing
8 anything with regards to potpourri; isn't that true?

9 A That's correct.

10 Q And you have no evidence at all to suggest that I ever
11 attempted to get potpourri back on the shelves for Curious Goods,
12 do you?

13 A No, to the contrary.

14 Q What do you have?

15 A I have the audiotape of you meeting with Brady Becker, with
16 Chris Quibodeaux, with Paul Buswell discussing getting the
17 product on the shelves.

18 Q Didn't I tell them that if they were going to do that, that
19 they should have it at least tested by two labs, and prior to
20 putting it back on the shelves, deliver the lab reports along
21 with the samples to local law enforcement and have them
22 independently test it before they even thought about putting it
23 on the shelves? Isn't that true?

24 A There were a lot of discussions.

25 Q I'm asking you about that one. That's what I told them at

1 that meeting. When they were asking about putting it back on the
2 shelves, I told them, if you're going to go in that direction,
3 you need to get at least two independent lab reports. Correct?

4 A You may have said that.

5 Q Didn't I say, in addition to that, you need to bring the
6 product and the lab reports to law enforcement and let them check
7 it out and give them a certain amount of time to get back to you
8 and let you know whether or not they think it's okay? Isn't that
9 true?

10 A Yes.

11 Q So I was merely giving them advice, if you're going to do
12 that, this is how you should do it, contrasted with I, myself,
13 was not trying to get potpourri back on the shelves, true?

14 A No. That's not true.

15 Q What did I do to get potpourri --

16 MR. WALKER: I object. It's beyond the scope of cross
17 examination.

18 THE COURT: It is.

19 And, Mr. Stanford, that whole issue is not lost on me,
20 that you were giving advice. If you remember, I got to see all
21 of those jailhouse call transcripts.

22 MR. STANFORD: That's just a minor fraction, Judge, of
23 the --

24 THE COURT: The ones that were at the *Garcia* hearing.

25 MR. STANFORD: Yeah. That's five of thousands.

1 And I'm just checking my notes to make sure.

2 That's all the questions I have.

3 MR. HIPWELL: Your Honor, may I have one more?

4 THE COURT: You may.

5 Here's a grand test. Does he really mean one?

6 MR. HIPWELL: I know, Your Honor.

7 RECROSS EXAMINATION

8 BY MR. HIPWELL:

9 Q The subject matter, though, is whether or not there was any
10 kind of a report of interview, whether it's a DEA-6 or any other
11 document, of the April 5th recorded, that is audio recorded,
12 conversation with my client before a transcript was produced. Do
13 you know if there was one or not?

14 A Yeah. I think I answered that there was.

15 Q That there was. I thought perhaps you had said that there
16 wasn't.

17 A No. I'm fairly confident I said that there was a document
18 prepared. I don't know at that point in time if it was a DEA-6
19 or a --

20 Q Forgive me, sir. If I put this on the stand -- forgive
21 me -- on the ELMO and just --

22 THE COURT: I knew he couldn't keep it to one.

23 MR. HIPWELL: Thank you, Judge.

24 BY MR. HIPWELL:

25 Q Is that your handwriting at the bottom or is that

1 Will White's?

2 A That's not my handwriting. I think that may be White's.
3 I'm not sure.

4 Q But would you accept, by looking at this for a second, that
5 it appears to be a summary of the conversations?

6 A Yes.

7 MR. HIPWELL: All right, sir.

8 That's all I have, Judge. Thank you.

9 THE COURT: Thank you, Mr. Hipwell.

10 MR. WALKER: I have no questions. I simply want to
11 offer a document. It is a portion of the *Garcia* hearing in which
12 Mr. Stanford discusses the RCA and that he's not a part of it.

13 MR. STANFORD: Can I see it?

14 THE COURT: I believe his exact words were, "That's not
15 mine."

16 MR. WALKER: "That's not me."

17 THE COURT: "That's not me."

18 MR. STANFORD: This is from --

19 THE COURT: The *Garcia* hearing. That's part of the
20 transcript.

21 MR. WALKER: It's 12/12/11. It's actually the
22 detention hearing.

23 MR. STANFORD: As I recall, Judge, we had approached at
24 sidebar concerning the news report, and, in my opinion, there was
25 confusion about when the articles were filed with regards to the

1 date of November 8th and November 28th and I'm trying to
2 clarify that.

3 THE COURT: Do you have any objection to his offering?

4 MR. STANFORD: No, sir.

5 THE COURT: All right. Let it be admitted.

6 Are we done with this witness?

7 MR. WALKER: We are, Your Honor.

8 THE COURT: Is he released?

9 MR. STANFORD: Judge --

10 MR. WALKER: I would ask -- well --

11 MR. STANFORD: I thought the Court stated earlier that
12 we were going to get a copy of the February 16th.

13 THE COURT: That's why I'm asking.

14 MR. WALKER: I'm going to get them a copy of the
15 recording of the 16th and that should be done by tomorrow.

16 MR. STANFORD: And I would just like to keep him under
17 the rule until we have that and have a chance to review the
18 transcript in its entirety, Judge.

19 THE COURT: All right. You can't talk about your
20 testimony to anybody, but you can go back to Dallas.

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you, Agent DeSalvo.

23 LaRae, you need a break.

24 Off the record.

25 (OFF THE RECORD)

1 THE COURT: Court will come to order. Everybody please
2 be seated.

3 First of all, what I intend to do on the motion for
4 prosecutorial misconduct, at such time as Mr. Stanford and
5 whichever other defendant wishes to receive the transcript of the
6 February 16, 2012, interview with Mr. Paul Buswell, five days
7 from their receipt they will notify me as to whether they wish to
8 reconvene the hearing or what their intentions are with that
9 transcript. I just need to know. And that can happen by
10 telephone or by e-mail. Once that determination is made, if we
11 come back and have some more testimony, there will be an
12 opportunity for the defendant to file a post trial brief on that
13 motion only.

14 And what we will do now is I will take up arguments,
15 since we haven't had any, on Mr. Buswell's motion to produce
16 Grand Jury transcripts. That was Document Number 293. And
17 followed by Mr. Reece's motion to produce Grand Jury transcripts.
18 That's Document 295.

19 I will also say before I go any further that I have not
20 yet even opened the Grand Jury transcripts of Agent DeSalvo's
21 testimony. I intend to do that and read them and I will let you
22 know what my response is on that once I complete it. It is my
23 appreciation from my prior ruling that the law is such that
24 unless the government calls Agent DeSalvo on direct, that that is
25 not properly *Jencks*, and there is a question, at least in my

1 mind, although it's not that large a question, whether this
2 constitutes a hearing within the definition of the statute, but I
3 will look through those transcripts based on Agent DeSalvo's
4 testimony for information I think may or should be disclosed to
5 the defendants.

6 All right. With that, Mr. Hipwell?

7 MR. HIPWELL: Your Honor, I'm going to defer to
8 Mr. Foster first. I think he's the one that needs to go if you
9 don't mind.

10 THE COURT: I don't mind.

11 Do you want to take your other things, too?

12 MR. FOSTER: I will, Judge. It all sort of runs
13 together.

14 THE COURT: It does. I understand.

15 MR. FOSTER: Thank you. Thank you to counsel for
16 trying to accommodate us, and to the Court, of course.

17 THE COURT: Public servant. I'm here to serve.

18 I am going to call you out on one thing before you
19 start. On page 9 of your brief you have an ellipsis. I know
20 what goes in that ellipsis. I don't know if that was intentional
21 or if it's your position that the standard is the same under
22 6(e)(3)(E)(i) as 6(e)(3)(E)(ii), but the words that go where that
23 ellipsis is supposed to go -- if you ever do that again,
24 Mr. Foster, put the words in there so I don't have to wonder why
25 they were taken out. The words are "in another judicial

1 proceeding." Do you know where I'm talking about?

2 MR. FOSTER: I see it.

3 THE COURT: All right. If you wrote that or if
4 somebody else in your firm wrote that, tell them don't do that
5 anymore.

6 MR. FOSTER: Yes, sir. Thank you.

7 Judge, the issue on this Grand Jury transcript, it was
8 really something I was going to follow up with, the question I
9 was going to ask Agent DeSalvo, and this relates also to the
10 motion to dismiss.

11 The question is whether or not the state of the
12 pharmacological evidence in particular was such that the
13 Grand Jury was fully informed of what the state of that evidence
14 information was at that time just as the question is whether or
15 not a reasonable person would have been on notice that another
16 substance such as AM-2201 could have or did or could be compared
17 to JWH-018 to determine whether the effects on the human central
18 nervous system are substantially similar to or are greater than
19 the effects on the central nervous system of JWH-018.

20 And, Judge, we went through the CFR. I think we
21 admitted this as an exhibit or we discussed it last time. I
22 believe that I pointed out the portion of the testimony there.
23 This is the DEA administrator's finding that there is little
24 information regarding the pharmacology, toxicology, and safety of
25 these substances in humans given that there is minimal amount of

1 pre-clinical investigations undertaken regarding these
2 substances.

3 And, of course, she didn't have to determine what the
4 pharmacological effect was because, under the temporary ban, all
5 she had to figure -- all she had to certify was that there was an
6 imminent threat, but that's different in the Grand Jury because
7 in the Grand Jury, an element of the analogue statute is that
8 it's substantially similar chemically and then you have the
9 alternative. I submit to the Court that that is the standard
10 that's being applied around the country. I believe the judge in
11 *Fedida* adopted *Turcotte*, that they have to show chemically
12 similar plus pharmacologically.

13 THE COURT: I am going to apply -- I do not read
14 *Granberry* as saying that it is disjunctive. I read *Granberry* as
15 not saying that at all. And I concur that it is a conjunctive
16 reading of the statute.

17 MR. FOSTER: Thank you.

18 And so, Judge, that means two things actually. It
19 means, first of all, that the Grand Jury would have had to have
20 been instructed on that.

21 THE COURT: I refer you to Count 1, paragraph 1A.

22 MR. FOSTER: Of the indictment, sir?

23 THE COURT: Of the superceding indictment.

24 A controlled substance analogue is a designer drug that
25 resembles, resembles, a controlled substance in molecular

1 structure and actual or intended physiological effect.

2 Does that place your client on notice of the charge
3 against him so that he can adequately plead double jeopardy?

4 MR. FOSTER: For double jeopardy purposes, I suspect --
5 well, it doesn't track the -- well, the citation to the statute,
6 it probably could be argued that we would have reference to the
7 statute so we could read the statute for ourselves, but the
8 question is what, if anything, was the Grand Jury told they had
9 to find in order to be convinced by a majority -- I don't know
10 how many grand jurors sat, the 13 or however many were needed --
11 what were they told they needed to determine and what evidence
12 did they get.

13 If we use as a baseline the administrator's statement
14 in March of 2011, they're starting at zero because this isn't
15 about what effect this drug has on a rat and it's not about what
16 effect JWH-018 has on a rat. The essence of proof is that they
17 have to prove that the effect that JWH-018 has on a human central
18 nervous system is substantially similar to the effect that
19 AM-2201 has on a human central nervous system. There's no proof
20 of that and there was none then.

21 In fact, Agent DeSalvo testified today -- I think the
22 testimony previously in the *Garcia* hearing under questioning by
23 Mr. Stanford was that Agent DeSalvo learned sometime in the
24 fall -- he said he looked at it and he could tell in 30 seconds
25 it was an analogue, but the testimony we heard today was that he

1 got -- he learned about this sometime after December 5th or
2 December 8th, I forget the date, and he called DEA. He said, I
3 talked to a couple of chemists.

4 So on the record of what's in front of us or what's
5 available, there's no information whatsoever that there is any
6 pharmacological information, testing, evidence, proof,
7 whatsoever, so then there's a real failing as to the second
8 element of the crime.

9 I understand and I appreciate the Court's determination
10 that you're viewing the statute in the conjunctive, chemical and
11 pharmacological, and the pharmacological is in the disjunctive
12 because it could be as represented. There's nothing whatsoever
13 in the discovery that there was any representation by Mr. Reece
14 certainly that JWH-018 and AM-2201 have similar pharmacological
15 effects on the human central nervous system. He had never been
16 here. He had never been to Curious Goods. He wasn't involved in
17 the manufacturing, the packaging, the sales. None of these
18 gentlemen in the courtroom knew him. He was acquainted with two
19 of the people who have pled guilty, but he had nothing to do with
20 any representation.

21 THE COURT: Why is that not a sufficiency of the
22 evidence argument?

23 MR. FOSTER: It would be a sufficiency of the evidence
24 argument, but I think in the Grand Jury context -- and that's the
25 *Strauss* case, which is really the lead case in the Fifth Circuit.

1 And what the *Strauss* case says -- of course, the facts
2 of *Strauss* is they found out after the fact that somebody had
3 said something in an unrelated civil case, and the Fifth Circuit
4 says, well, you know, you can't put that at the government's
5 feet. If this fellow said something in an unrelated civil case,
6 it's certainly not the government's issue. They had no control
7 over it.

8 But if you have a set of facts or a set of
9 circumstances which are presented to the Grand Jury -- if the
10 Grand Jury is told, okay, this is an analogue and that means that
11 it meets the chemical standard of the statute and it meets the
12 pharmacological standard of the statute, and if in fact there's
13 no evidence or proof available at that time -- I mean, based upon
14 what we've seen, I don't really think there was.

15 So that was the question I was going to ask
16 Agent DeSalvo. What did you know about the pharmacological
17 effect of AM-2201 as compared to JWH-018 on the human central
18 nervous system at the time you testified before the Grand Jury?
19 That was the question I was going to ask him. I suspect -- I
20 don't know what he was going to say.

21 THE COURT: You would be speculating.

22 MR. FOSTER: I would be speculating. That's right. So
23 that's my point there.

24 And, Judge, if we go back, you know, the initial
25 disclosure we got from the government on the pharmacology was

1 a -- this is in the record. It's a declaration of the
2 pharmacologist, Dr. Walker, and this was filed by the government.
3 It's already in the record. It was filed by us, rather, an
4 attachment, but this is the declaration of Michelle Walker who's
5 their pharmacologist in this trial. She never says that JWH-018
6 has the same effect on the human central nervous system as
7 AM-2201. She makes another statement. For example, in
8 paragraph 2, she says that it has been determined that AM-2201
9 produces canniba -- canniba -- I can't say that -- effects
10 similar to those produced by JWH-018 based upon pharmacological
11 studies and activity reports. That's on rats.

12 THE COURT: That's for your *Daubert* hearing.

13 MR. FOSTER: That's for my *Daubert*, yes, sir, it is,
14 but preliminarily, though, what my concern was with the
15 Grand Jury is since there was really nothing out there -- and I
16 don't know if you've had a chance to look at the order of
17 Judge Dalton in *Fedida*, but he says, listen, guys, you better
18 tighten up your pharmacology. I know you're trying to do some
19 pharmacology comparisons to JWH-018 so you can prove these
20 things, but he says as of right now, you know, you're really not
21 there. And if we go back to September of 2012, they were further
22 away from there than they are today in May of 2013.

23 So that was the point I was trying to make in the
24 Grand Jury. I just wanted to see what type of evidence and
25 probably, more importantly, what was the quality, what was the

1 representation made to the Grand Jury as to the quality of the
2 evidence on pharmacology, which is an essential element of the
3 charge. And of course the Title 21 charge is the foundation for
4 the money laundering charge, so it seems to me it would go to
5 both. So if the Court were to look at that, that was my area of
6 inquiry.

7 And, Judge, the other thing -- I don't have much
8 argument to add much to the surprise of Mr. Walker, but the thing
9 I was going to ask -- and I think you've already said that this
10 isn't something that you would want to entertain. I was going to
11 ask for leave to file maybe a five-page or a seven-page brief,
12 and from what I understood, the Court does not want us to file a
13 reply, which we received the government's response to our motion
14 to dismiss a day or two before the hearing. We had plenty of
15 time. I got to read it, so, you know, that wasn't an issue.

16 But the time to file a reply has not yet expired, and
17 what I was going to ask the Court was in lieu of a reply, if you
18 would permit us just to file a limited brief because I would like
19 to discuss -- because I knew you were interested in *Fedida*. You
20 had mentioned from the bench once if anybody knew whether the
21 decision had come down. So that's what I would ask the Court.

22 THE COURT: Do you still want to file another brief?

23 MR. FOSTER: Well, you know, one page is the
24 certificate of service, you know, but --

25 THE COURT: I tell you what. I wanted to be able to

1 get as many of these to Judge Foote as I can because I am very
2 sure, regardless of whose ox gets gored by whatever my
3 recommendation is, the other side is going to object. That's the
4 nature of the beast.

5 Because all but two of my rulings on these motions
6 besides the discovery motion will be in the nature of reports and
7 recommendations, she will have de novo review, which you could
8 bombard her with more 31-page briefs and you can put that reply
9 in there because after digesting -- and I have a transcript of
10 everything that was said last week. I'm not sure that a reply
11 would make any difference to me.

12 Like I said, I appreciate being given the *Fedida*
13 opinion. It really didn't make me see anything any differently.
14 So I would suggest save the trees for Judge Foote. I'm sure
15 she's going to appreciate that.

16 MR. FOSTER: All right, sir. Well, that would be --
17 there's really nothing I have really to add to that argument, but
18 I really do think that the notice -- what Judge Dalton did in
19 *Fedida*, he said that the two-dimensional comparison is sufficient
20 to satisfy notice, at least for due process grounds, and he did
21 not address pharmacology because he said in that case there was
22 evidence that the defendant actually knew. In a post-arrest
23 statement, he said something along the lines, oh, yes, you know,
24 I knew that this was just like the other chemical and had the
25 same effect.

1 So he didn't have to address the issue, which I think
2 is squarely before you, that is, whether or not there was
3 sufficient notice that there's a standard of the effect on the
4 human central nervous system for drug A, JWH-018, and how do I
5 measure that against the effect of AM-2201 on the central -- on
6 the human central nervous system when there's no testing on that
7 either. So you have nothing compared to nothing and how do you
8 have notice whether they're substantially similar. So I think
9 that pretty much encapsulates our argument.

10 Thank you, sir. May we be excused?

11 THE COURT: You may be excused.

12 Mr. Hipwell, do you want to talk about the Grand Jury?

13 MR. HIPWELL: Your Honor, Mr. Belanger is going to
14 briefly.

15 MR. BELANGER: Good afternoon, Your Honor. This will
16 only take a few seconds.

17 Since the Court has Agent DeSalvo's testimony and will
18 be reviewing it to see what portions can be disclosed, if any, to
19 the defense, we would deem the request for testimony satisfied
20 with that.

21 Regarding production of the instructions, you know,
22 today the Court is indicating that it reads the statute to be
23 read conjunctively as opposed to disjunctively. It looks like
24 the government has, you know, conceded to that reading within the
25 last couple of hearings, but was that the government's position

1 at the time of the Grand Jury and how was the Grand Jury
2 instructed on how to apply the Analogue Act?

3 THE COURT: Do you agree that Count 1, paragraph 1A,
4 the way it is written is in the conjunctive?

5 MR. BELANGER: I would agree that that is how it reads,
6 Your Honor.

7 THE COURT: Okay.

8 MR. BELANGER: But I guess the only thing I'm asking is
9 for the actual instructions to be provided to the Court for
10 review. I don't necessarily myself need to see them, but just to
11 make sure that they were legally sufficient, and the basis on
12 that is, you know, even though this reads this way, our concerns
13 were with the *Granberry* case conflicting with some of the others
14 and the possibility of the interpretation of that statute. I do
15 not see what the prejudice would be in forwarding that to the
16 Court for review, and I really don't see how that would infringe
17 upon the rules for Grand Jury.

18 That's really all I have to say. Thank you,
19 Your Honor.

20 THE COURT: Mr. Walker, do you want to talk?

21 MR. WALKER: Very, very, very briefly. One, concede, I
22 hate that word because we didn't concede anything. It should be
23 read conjunctively.

24 About 3:00 o'clock in the morning I began thinking
25 about this argument and began researching it in a different way.

1 One, the instructions were given absolutely correctly. Two, the
2 indictment expresses what the state of the law is absolutely
3 correctly.

4 *United States vs. Linetsky*, L-I-N-E-T-S-K-Y,
5 533 F.2d 1992. In that case the defendant was charged with
6 obscenity. The thing is the Miller test came out between when it
7 was indicted and when it went to trial, so there was no question
8 that the Grand Jury was instructed improperly because pre Miller
9 obscenity was different than post Miller obscenity.

10 The Supreme Court in saying there was absolutely
11 nothing wrong said this. I take it back. The Fifth Circuit.
12 And it's a 1976 case. A Grand Jury need not be convinced beyond
13 a reasonable doubt that a defendant is guilty. If an indictment
14 is valid on its face, it is enough to call for trial of the
15 charge on the merits.

16 In this case there's no question that when the
17 Grand Jury looked at the indictment, the indictment itself
18 correctly stated the law, so we've done everything that we have
19 to do in order to then present the case for trial.

20 THE COURT: All right. I'll give you an insight
21 into -- and I combined 293 and 295 in one memorandum ruling.
22 That one is not an R and R. It is a memorandum ruling.

23 First of all, in terms of the witness statements, we
24 have a scheduling order for the production of *Giglio*. Although I
25 personally have reservations about this as a matter of fairness,

1 compliance with *Jencks* is compliance. If *Brady* is in the *Jencks*,
2 then you've complied. I don't particularly think that's fair.
3 It has been the policy and practice of the government in this
4 division that they turn over *Brady* as promptly as they can. I
5 don't see any reason why that should not continue. I encourage
6 them to do that, but the rule is that if you comply with *Jencks*
7 and your *Brady* materials are in the *Jencks*, you've complied. So
8 there's nothing -- no special set of circumstances that would
9 persuade me to deviate from the custom and policy in this
10 district, the scheduling order, Rule 16(a)(2), and/or the
11 *Jencks* Act. I'm sorry. Rule 26.2.

12 The second thing is the production of Grand Jury
13 transcripts under 6(e)(3)(E)(i). The way I read the law -- and
14 there is some disagreement about this -- it's to prevent
15 injustice in another proceeding. That's the particularized need
16 test. You will see that the *Douglas Oil* case involved a separate
17 proceeding. *In re Grand Jury Testimony* of the Fifth Circuit
18 involved a separate proceeding.

19 And the second subparagraph of 6(e)(3)(E) deals with
20 really what is before me with these motions, is there something
21 that may indicate the case should be -- the indictment should be
22 dismissed, which puts you into prosecutorial abuse or sufficiency
23 of the evidence. I haven't -- it is a catch-22 for the
24 defendant. They need to be able to show with particularized
25 facts to support their claim that something happened in the

1 Grand Jury, but they can't get the Grand Jury testimony to show
2 it. Again, not particularly fair, but far be it for me to
3 deviate from what the courts say.

4 I will follow *Bank of Nova Scotia vs. United States* and
5 I will deny the motions for the production of the Grand Jury
6 transcripts, and, like I said, you will have a formal written
7 opinion to that effect.

8 All right. Anybody else want to talk about any other
9 motions before we go on? Mr. Domingue?

10 MR. DOMINGUE: Your Honor, you had invited
11 Mr. Washington and I to speak and I'm not sure as to the time of
12 that, if now is a good time.

13 THE COURT: Now is a good time.

14 MR. DOMINGUE: Thank you, Your Honor.

15 Your Honor, at the hearing last Friday, four motions
16 got -- well, our two motions were heard with Mr. Stanford's
17 motion and Mr. Foster's motion. We filed our motions on two
18 particular issues, and I think because they were taken up all
19 together with the other motions, they kind of got lost in the
20 mix. Our motion, 273, was on a very precise issue, is it proper
21 to apply the Analogue Act to an existing patented substance, and
22 it seems like it got lost in the mix, and the judge in the *Fedida*
23 case seems to have glossed over that as well.

24 So the case -- let me back up. The judge in *Fedida*
25 said that -- he found the Analogue Act to be ambiguous.

1 Therefore, I look at the legislative history. When you look at
2 the legislative history, the purpose of the Analogue Act is to
3 target newly created substances designed to circumvent the
4 Controlled Substances Act. Here you have AM-2201 which has been
5 in existence since at least 1999, so you can't say in one breath
6 that the Analogue Act applies to new substances and then turn
7 around and apply it to an existing patented substance.

8 THE COURT: How do I get past *Granberry* which says in
9 no uncertain terms that this statute is not vague?

10 MR. DOMINGUE: I think it is, Your Honor.

11 THE COURT: They're the Fifth Circuit. The last time I
12 went against the Fifth Circuit, I got scowled upon.

13 MR. DOMINGUE: Well, that's good. You know,
14 Your Honor, if you look at *Granberry*, it says the statute makes
15 plain that drugs which have been chemically designed to be
16 similar to controlled substances, but which are not, that's what
17 it applies to. That's *Granberry*. I would ask -- I would
18 encourage the Court to follow *Granberry* in that regard.

19 THE COURT: Here's where my problem is. And I
20 understand your argument, it wasn't lost, and we included all
21 four of them at once for a reason, because that's what the
22 R and R is going to deal with, all four of them at once, because
23 it seemed to me to make perfect sense to do it that way.

24 If *Granberry* says the statute is not vague, I do not
25 look to the congressional intent. I am not to look to the

1 congressional intent. It's plain on its face. Some courts have
2 said it's ambiguous, but the controlling court in this circuit
3 says it's not and I'm going to follow that.

4 MR. DOMINGUE: Okay. But *Granberry* also said the
5 statute applies to newly created substances, and if we follow
6 *Granberry*, how do we even get the Grand Jury to issue an
7 indictment if they're instructed properly on the law? Were they
8 told that AM-2201 was not a new substance created to circumvent
9 the Controlled Substances Act or the attempted temporary
10 scheduling order? I think that's important. If *Granberry* is
11 controlling, then *Granberry* says what it says. The Analogue Act
12 applies to newly created substances.

13 THE COURT: And where does the newly created
14 substances, or what I'm going to call your temporal component,
15 come in to play in the clear language of the statute?

16 MR. DOMINGUE: And that's why we would say the statute
17 is not clear, but the Fifth Circuit has told us what it says
18 without even resorting to the legislative history. The statute
19 makes it clear. It applies to new substances, period. You don't
20 need it for an existing substance.

21 We know full well that the DEA was quite aware of
22 AM-2201 when it initiated the temporary scheduling action. It's
23 in his reports. They knew about it. The proper way to control
24 it was to exercise -- was to use 811(h), its temporary scheduling
25 authority, not two months later to start issuing secret reports

1 talking about ways to entrap people.

2 And in response to one of the motions, I believe it was
3 our second motion, 314, the government even suggested if the DEA
4 was trying to set a trap, they would have never added 2201 to the
5 Controlled Substances Act. Well, they didn't. The DEA did not
6 do that. Congress did it. In fact, the DEA issued a notice of
7 permanent scheduling on March 1st, 2012, only for the five
8 original substances in its temporary action. So even when it
9 seeks to permanently schedule substances, it doesn't include
10 AM-2201 in that, so the government tacitly admitted the DEA was
11 trying to entrap people.

12 In response to our motions, we pointed out that they
13 didn't address the statement of the DEA spokesperson,
14 Ms. Carino (phonetic), who it was her opinion that it only
15 applied to the five named substances. If the government wanted
16 to -- if the DEA intended that it apply to other things, they
17 should have said so. That's what public notice is for and that's
18 what is required. They didn't do that.

19 I would encourage Your Honor to look at the Ohio case
20 that I presented this morning.

21 THE COURT: I am going to do that, and I am going to
22 read *Fedida* more carefully because I didn't get a chance to read
23 it.

24 MR. DOMINGUE: Thank you, Your Honor.

25 The other thing --

1 THE COURT: That was a *Daubert* ruling, wasn't it, the
2 Ohio case?

3 MR. DOMINGUE: It went through a *Daubert* analysis,
4 right.

5 THE COURT: Did he have an evidentiary hearing?

6 MR. DOMINGUE: He did. He had testimony from the
7 two -- only -- what's important, he only had testimony from the
8 State's experts. The defense put up no experts and they still
9 won.

10 THE COURT: Well, you know, I seem to recall at the
11 last hearing with Judge Foote your co-counsel said how concerned
12 he was for the *Daubert* hearing. I tend to agree that that is
13 going to be a very significant point in this case given the state
14 of the law and the state of the science. What's before me is a
15 sufficiency of the indictment which is a different standard
16 altogether. It's a very different standard altogether. I don't
17 have the *Daubert* in front of me.

18 Go ahead.

19 MR. DOMINGUE: But I guess the point is, Judge, I just
20 don't want -- I can't reconcile in my mind how the courts, and,
21 in particular, the Fifth Circuit in *Granberry*, can say that the
22 Analogue Act applies to newly created substances, you know,
23 developed for whatever reason, and then turn around and apply it
24 to an existing patented substance. By virtue of the patent, the
25 United States Government has said it is a new novel substance not

1 like anything else.

2 THE COURT: How do you distinguish the GBH, the date
3 rape drug, cases?

4 MR. DOMINGUE: I don't believe the defense attorneys in
5 those cases did their job. They should have raised that issue.
6 And, you know, Your Honor, it was raised in the *Fedida* case, but
7 in his opinion the judge absolutely ignored it. I don't believe
8 it's something that can be ignored. You can't have the
9 United States Government issuing a patent saying this is
10 different, this is new, this wasn't designed to be like anything
11 else.

12 In fact, in the patent applications for the AM
13 chemicals, including AM-2201, the patent office had the benefit
14 of the Huffman articles. JWH-018 is even mentioned on the patent
15 application. So the U.S. Patent Office was clearly aware of
16 JWH-018 and all the other chemicals, but, nonetheless, issued
17 patents on AM-2201, so I think that's significant. I didn't want
18 those things to be lost with all the other things we started
19 talking about.

20 I don't think we can get to the point where you're
21 talking about what does substantially similar mean because the
22 first hurdle is does the Analogue Act apply and should the DEA
23 have used 811(h). I think the answer is yes. The Analogue Act
24 was not the way to go. They left people with no notice as to
25 what their intent was. Even people with the DEA didn't know.

1 Thank you, Your Honor.

2 THE COURT: All right. Mr. Washington, did you want to
3 say anything else?

4 MR. WASHINGTON: Not at this time, Your Honor. Thank
5 you very much for the opportunity.

6 THE COURT: No other defense counsel rises to speak.
7 Mr. Walker?

8 MR. WALKER: Briefly.

9 I'm going to first address what Mr. Domingue had to
10 say, and then I'm going to address one other general area that
11 relates to the motions to dismiss.

12 You are correct that when you look at *Granberry*, it's
13 unambiguous on its face. The statute says it has to be
14 chemically similar. Plus it has to be pharmacologically
15 substantially similar or intended or represented to be. There's
16 nothing temporal in the statute.

17 And I understand that the different cases talk about
18 that, talk about that it was -- they talk about the legislative
19 history, but that's not in the statute and the statute is not
20 unambiguous. The Court asked, how do you reconcile it with the
21 date rape drug cases, and he said, the defense didn't do their
22 job. I submit that's wrong.

23 I think that when you look at the *Roberts* case and
24 the -- it begins with a "W" and I think it's the *Washam* case.
25 They specifically talk about the fact that it doesn't have to be

1 a newly created drug. So when they were faced with that
2 situation, they said it doesn't have to be. So apparently the
3 defense attempted to do their job. The Court looked at the
4 unambiguous statute and said that's not what the statute says.
5 So that's my response.

6 The other thing that the Court brought up previously
7 was notice, and the defense has argued notice, and when I stood
8 up to argue the motions to dismiss talking about the fact that
9 Mr. Sims kept writing down facts he wanted me to argue, I said
10 this is not the appropriate time to argue facts. At trial we're
11 going to be submitting facts that demonstrate that they knew what
12 they were doing.

13 With Mr. Reece, we're going to submit that he was
14 having material that was seized coming into the United States and
15 that he did nothing about it. He recognized that that was a part
16 of the cost of doing business because what he was bringing in was
17 this illegal substance. Employees actually received direct
18 written notice that the substances seized were analogues and one
19 of those substances was AM-2201.

20 So we're going to submit evidence at the time of
21 trial and I'm sure the defense is going to attempt to submit
22 evidence that contradicts what we're saying at the time of trial,
23 but that's what the jury's job is going to be, to decide whether
24 these people knew they were selling an analogue. That's what the
25 elements require.

1 THE COURT: And it's a specific intent.

2 MR. WALKER: It absolutely is a specific intent crime
3 as we have demonstrated in the motions that we submitted to the
4 Court, and when you do that, any argument about notice, as the
5 Supreme Court says, has to be looked on with skepticism.

6 We have equally strong evidence against the defendants
7 who were in Louisiana, including Mr. Domingue, Mr. Stanford, and
8 Mr. Buswell, the fact that they're mislabeling the material and
9 that they're meeting with employees teaching them what you can
10 and can't say so that they can circumvent the law.

11 If it wasn't an analogue, it's legal. That's really
12 what it comes down to. If what they're selling is not an
13 analogue, it's an absolutely legal substance, why did they feel a
14 need not only to intentionally misbrand the substance, which
15 would be a way to circumvent the analogue statute or at least
16 attempt to do so, but also to have specific meetings to teach how
17 to evade law enforcement?

18 They know that every kid that's coming around the block
19 who's buying the stuff, everybody 18 and older who they're
20 selling hundreds of thousands of dollars of material to, they're
21 all smoking it, but they put the documents -- and the evidence we
22 intend to argue, circumstantial and direct, is the reason why it
23 was on there is to circumvent the analogue statute.

24 So we have a tremendous amount of information that will
25 demonstrate that they knew what they were doing. It's just this

1 is not the appropriate time for it.

2 So when the Court previously said, I'm concerned about
3 notice, my response was in my head, well, Collin was right and I
4 was wrong. I should have argued more about the facts in this
5 case because at trial the facts will demonstrate that they did
6 have notice.

7 THE COURT: All right. I am going to read the cases,
8 Mr. Domingue, those two that were brought to me today, in detail.
9 I don't think it's going to change the outcome.

10 All of these four motions -- 238, 273, 314, and 315 --
11 basically deal with the sufficiency of the indictment. I cannot
12 fit in my head that all of these factual issues that are being
13 raised by the defense constitute preliminary findings of fact
14 necessary to decide questions of law. They are questions of
15 fact. If the experts are disqualified, this case will have a
16 much different outcome than it will if they're not. That
17 requires a full evidentiary hearing. That's not for me to
18 decide.

19 The government alleges that AM-2201 is a controlled
20 substance analogue. That is a question of fact I have to assume
21 as true for purposes of the sufficiency of the indictment. I
22 don't know if it is or not.

23 The question of law is what I can take up and I can
24 take up the factual predicate for that or the preliminary facts
25 if they are undisputed, and if there is anything that's been

1 clear in the last two days in this courtroom, almost everything
2 is disputed when it comes to this stuff.

3 On the notice, I think the notice is present, but as
4 the Supreme Court says, where there is a specific intent crime,
5 notice is something that's going to -- the government is going to
6 have a heavy burden on.

7 I'm going to follow *Granberry*. I am going to interpret
8 *Granberry* the way I think it actually is which is it's
9 conjunctive. If the statute is not ambiguous on its face, I
10 don't need to go to the congressional intent. I don't think it's
11 ambiguous on its face. I don't think the term "substantially
12 similar" renders it unconstitutionally vague for purposes of a
13 motion to dismiss the indictment.

14 I will follow *Turcotte*. The omission of AM-2201 from
15 the March, 2011, order I don't think renders it
16 unconstitutionally vague for a couple of reasons. One is there
17 were only a few instances of reported incidences. My memory from
18 that NFLIS report is there were 8 in 2010 whereas there were
19 2,000 of JWH-018 or 1,887, some large number. The reasoning for
20 the temporary emergency ban was to address that kind of problem,
21 and if you say, well, you've still got to put AM-2201 in there,
22 then the controlled substance analogue statute is essentially
23 rendered meaningless.

24 I will follow *Roberts*. I will follow *Washam*,
25 W-A-S-H-A-M. There is a case that we will also follow on your

1 argument, Mr. Domingue, *United States vs. Niemoeller*,
2 N-I-E-M-O-E-L-L-E-R, that deals with that in part. And there's
3 more.

4 The long story short is I'm very tired at this point in
5 the day, but the recommendation will be that those four motions
6 to dismiss be denied on various grounds.

7 As I told you when we started off, until they are
8 actually filed, that's when your 14-day objections -- or 14-day
9 period for objections begins to run. They still use the mailbox
10 rule, and so if I say 14 days, you will see in CM/ECF it's
11 actually 17 days, so there you have it.

12 And Judge Foote knows all of this is coming. I wanted
13 to try to get as much of it to her as I could so that when you
14 have your hearings with her on May 17th, you will at least know
15 where I'm coming from and that will give you the ability to have
16 hopefully the most constructive hearings you can on the *Daubert*
17 issues and that sort of thing.

18 MR. WALKER: We're not having any of those hearings on
19 May 17th. They're in July.

20 THE COURT: In July. I'm sorry. Whatever hearings
21 you're having in May.

22 Okay. Anything else that needs to come before the
23 Court at this time?

24 MR. WALKER: No, Your Honor.

25 THE COURT: Oh, I do have one other thing. Since you

1 stood up, you made me remember. Thank you.

2 Mr. Walker, I am very troubled by this and I might
3 actually ask for another brief on this.

4 Mr. Stanford's motion --

5 MR. WALKER: Which one?

6 THE COURT: I knew you were going to ask me that. It
7 might be 256, but I don't remember. I think it's 256.

8 As I understand the problem that Mr. Stanford has, and
9 it seems inherently unfair to me, there are people out there that
10 supposedly say that he did all the wrong things that the
11 government says he did. He cannot investigate -- and I
12 understand the whole Jencks Act thing. He cannot investigate who
13 are the people that said nothing and who are the people that said
14 something because he doesn't even know who they are.

15 Now, it's my appreciation that I can order the
16 production of a witness list in advance of trial, so that would
17 at least give him some ability to go conduct an investigation
18 into the allegations against him, because, as I appreciate what I
19 heard last week, his name is not on the roster at the
20 December 8th, 2011, meeting, but he knows if he was there, who
21 was there, what he said, so on and so forth, so that one doesn't
22 give me quite as much concern. You know, all he knows as he sits
23 here trying to prepare his defense is he's accused of training
24 these people, educating these people. He has no idea who these
25 people are or how to go investigate and prepare his defense.

1 Can you respond to that?

2 MR. WALKER: I can. This case is unique. And I would
3 rather do this in writing because I think it's probably more
4 appropriate in writing. There are specific factual allegations
5 that have occurred in this case from, let's say, the nurse who
6 testified at the hearing in connection with his detention forward
7 where there has been evidence of manipulation of witnesses. I
8 think that under some circumstances you ultimately have to
9 balance. In this case --

10 THE COURT: I presided over that for record purposes.

11 MR. WALKER: I know you did. And that's not the only
12 thing that we have had happen that has suggested the manipulation
13 of witnesses, including the two affidavits that were submitted in
14 connection with the motion to dismiss of Paul Buswell, both of
15 which had clearly factually inaccurate statements. I don't call
16 it a lie because to call it a lie goes to the person's intent,
17 and I think that's -- I just don't think that's appropriate,
18 though clearly there's no doubt that the statements that were
19 submitted by Daniel Stanford, the defense attorney, in connection
20 with those motions were factually inaccurate.

21 And even in the February -- the first interview, the
22 interview on the 15th, Paul Buswell talks about the possibility
23 of his brother talking to federal agents. And the Court's got
24 that transcript, so you can see it.

25 There are things about this case and the actions of

1 Mr. Stanford in connection with this case as well as other
2 matters that can be briefed that make it such that I have a deep
3 concern about either the manipulation or -- I don't want to use
4 the word "threats" because I think it's too strong, but I think
5 it's somewhere between manipulation and threats of witnesses that
6 could put the government at a disadvantage in this case and could
7 also put the witnesses at a disadvantage in this case.

8 And there is case law specifically out there that says
9 under those circumstances, that allows for not turning over
10 Jencks Act material. If it's possible that witnesses are going
11 to be manipulated or witnesses are going to be subject to any
12 kind of intimidation or manipulation, that's a basis not to turn
13 over the Jencks Act material until the trial is going on.

14 To give early disclosure of witnesses in this case,
15 based on what's occurred in this case up to this point and other
16 information that we have, it subjects witnesses to potential
17 abuse, and so because of that, I would ask that the Court not
18 make that order or at least allow us to brief the issue before
19 the Court considers that.

20 THE COURT: Mr. Stanford?

21 MR. STANFORD: I'm not sure what Mr. Walker is talking
22 about on the nurse issue.

23 THE COURT: I heard that. I know all about that.

24 MR. STANFORD: But from my perspective, Judge, this is
25 a person who contacts me for an interview or for a conference and

1 I meet with her. When I find out she's represented, I stop it
2 and call her -- I'm the one who called the lawyer. Somehow
3 that's inappropriate?

4 Just like with Mr. Haney. Out of an abundance of
5 caution, not to like -- I wanted to give him a professional
6 courtesy of this is what's coming down the pike, here it is
7 upfront. I asked Mr. Goode to call so that the government can't
8 say that I'm trying to manipulate or do anything and that gets
9 twisted around.

10 THE COURT: Well, Mr. Goode's e-mail is a little --
11 lacked a little discretion if you ask me.

12 MR. STANFORD: But as far as me -- how can I -- what
13 can I do to manipulate or threaten a witness? I can either ask
14 them if they want to talk to me or not. If they say no, that's
15 it. And I can't make them say anything. I have no power to
16 assert any kind of threat. What am I going to do? Arrest them?
17 Indict them? Investigate them? I can't do any of that.

18 If I do anything improper, I'll get reported to the
19 U.S. Attorney's Office or to some law enforcement agency, and,
20 you know, that wouldn't do me any good with Your Honor given the
21 fact that I'm on pretrial release because I understand that you
22 take all of that very seriously.

23 All I'm asking for is an opportunity to defend myself,
24 to know who is making these accusations. Just like Your Honor
25 noted earlier, it's very difficult to raise misconduct when the

1 people or the entity you're raising it against holds all the
2 cards and they get to play the cards the way they see fit. I'm
3 being accused of a lot of things and, you know, I have no idea
4 where it's coming from. There's no documentary evidence. It's
5 apparently all witness statements, but I don't know who's saying
6 what or were they manipulated, were they pressured, were they
7 given promises.

8 What I tried to show today with Mr. Barrow or Mr. Green
9 or Mr. Malone, there seems to be something going on in that
10 they're being treated a little bit differently than --

11 THE COURT: They've all pled guilty already. You can
12 consider them cooperating witnesses.

13 MR. STANFORD: But, Judge, out of fairness I think that
14 you're directly on point. I should at least know who are the
15 witnesses and be given the opportunity in some way to try to
16 investigate in defense of my case.

17 THE COURT: All right. This is what I'm going to do.
18 I'm going to -- you want to say something, Mr. Washington?

19 MR. WASHINGTON: Yes, Your Honor, if I may.

20 THE COURT: On this subject?

21 MR. WASHINGTON: I think, unless I'm mistaken, we're
22 also talking, in part, about a motion that Mr. Stanford filed
23 essentially for a Bill of Particulars to also get the same
24 information. During the hearing last week we talked about the
25 specific paragraphs in the indictment, and at that time I also

1 rose to remind the Court that Mr. Domingue adopted that motion.
2 He did not adopt the motion for prosecutorial misconduct, but
3 that particular motion he did.

4 And as the Court is -- well, maybe the Court is
5 unaware, but Mr. Domingue has no history of witness manipulation
6 or anything of that sort, and the adoption that we filed in that
7 particular -- for that particular motion made clear that we
8 wanted the same kind of consideration except we wanted it
9 specifically for Barry Domingue so that we would know who these
10 witnesses are that are stating that Mr. Domingue trained them to
11 evade law enforcement or Mr. Domingue was somehow involved in the
12 sale and distribution of Mr. Miyagi. As Mr. Stanford just
13 argued, Mr. Domingue feels equally as strong that he, too, is
14 entitled to know who's making these accusations against
15 Mr. Domingue.

16 THE COURT: All right. Would you agree with me,
17 Mr. Washington, that in a normal circumstance -- setting aside
18 *Brady* and *Giglio*, in a normal circumstance that would be governed
19 by the Jencks Act?

20 MR. WASHINGTON: In a normal circumstance it would.

21 THE COURT: And your point -- both of your points is
22 this isn't really a normal circumstance because there's this
23 universe of people out there that you have no idea who they are.

24 MR. WASHINGTON: That's correct.

25 THE COURT: And if they may have been taught in a group

1 setting, for example, in an auditorium classroom, you might not
2 even know what their names are. I'm not suggesting that they
3 are, but that makes this a little different --

4 MR. WASHINGTON: That's right.

5 THE COURT: -- as opposed to just Mr. Barrow or
6 Mr. Green, et cetera, et cetera.

7 I tell you what I'm going to do. Mr. Walker, I know I
8 said I wasn't going to make you brief anymore, but I am.

9 MR. WALKER: You did, and I'm disappointed.

10 THE COURT: Well, today is the 2nd of May.

11 MR. WALKER: Your Honor, the only issue with
12 briefing -- and I will gladly brief.

13 THE COURT: I want you to distinguish the cases that
14 say I can give them that witness list because my research
15 suggests that under certain circumstances I can require you to
16 give them a witness list. I am leaning that way. That's one of
17 my ones that's sitting on my back burner because I think this
18 case does present a unique set of circumstances as it pertains to
19 those two defendants, you know, and perhaps Mr. Francis as well.
20 I don't know if he's in the same boat.

21 And having presided over all the hearings involving
22 Mr. Stanford, I know where the government is coming from with
23 regard to him, but I haven't heard anything like that about
24 Mr. Domingue or Mr. Francis for that matter, and they adopted his
25 motion. I think it is the one with the Bill of Particulars,

1 whichever one that is.

2 MR. WALKER: The only issue is they have a joint
3 defense agreement, so as a result of that, if you say, okay,
4 Mr. --

5 THE COURT: Well, I might be able to undo that. That
6 might be a way to make this work. What I'm trying to do is get a
7 level playing field here.

8 And I fully understand that they don't need the name of
9 Boyd Barrow, Josh Espinoza, any of the named co-conspirators, but
10 it just strikes me as a bit unfair to hear there's been, you
11 know, tens, if not dozens, of interviews of people. There is an
12 allegation that says they trained, so on and so forth, and they
13 don't even know where to start to find out who's leveling those
14 accusations. Then they get to trial and here comes Joe Smith.
15 It's the first time they ever see him. He walks up here, gets on
16 the witness stand and says, Daniel Stanford trained me and
17 Barry Domingue taught me, and they can't even cross-examine him.
18 They don't know anything about him. And perhaps there is some
19 protective order I can fashion.

20 Hang on, Mr. Hipwell.

21 I don't know. I just want you all to understand where
22 my head is before I decide that motion because I have a genuine
23 concern about that. It just doesn't seem fair to me in the
24 circumstances of this particular case.

25 MR. WALKER: Your Honor, because the next matter --

1 well, one, the trial is in October, so we have plenty of time.

2 Two, the next matter I know Mr. Hipwell and I are going
3 to be arguing on the 17th. We're only arguing Mr. Hipwell's
4 motions. Would it be possible that it be the week after the
5 17th, the Friday after the 17th, whatever that Friday is?

6 THE COURT: It would be possible for me because this is
7 one that doesn't have to be taken up that quickly.

8 MR. WALKER: There you go.

9 THE COURT: Any objection to that, Mr. Stanford?

10 MR. STANFORD: That would be May 24th, Judge.

11 THE COURT: Are you okay with that?

12 MR. STANFORD: Yes, sir.

13 THE COURT: Mr. Washington?

14 MR. WASHINGTON: Your Honor, we're okay with that also.

15 THE COURT: All right. Mr. Hipwell, I didn't mean to
16 cut you off.

17 MR. HIPWELL: And I rise, Your Honor, just with a final
18 point.

19 I fully understand the Court is convinced that *Jencks*
20 given at the time of *Brady* -- that *Brady* given at the time of
21 *Jencks* is sufficient. We're bitterly disappointed to hear that.

22 THE COURT: I don't know that it's sufficient,
23 Mr. Hipwell. I didn't say that. I said that's what the law is.

24 MR. HIPWELL: Well, you know, Your Honor, I just -- and
25 I'll sit down in a second, but having done this for 31 years,

1 I've had judges as varied and as different as John Parker,
2 Frank Polozola, and Ralph Tyson tell me as a prosecutor that I'm
3 going to give you enough rope to hang yourself. What we don't
4 want, Your Honor, is a documents dump at the last minute where we
5 don't have time.

6 MR. WALKER: Judge --

7 MR. HIPWELL: And if I could -- and I'll be through in
8 a second, Judge. That is just in the context of whenever we get
9 our *Jencks* material, I don't want to be before Judge Foote and
10 say, Judge, I have not had a chance to read this. And whether
11 it's another week or another two weeks or whatever, I don't know.
12 I trust ultimately it will be something that the Court can share
13 with Judge Foote at least as a concern that we have.

14 Thank you, Your Honor.

15 THE COURT: I told you that I would do exactly that and
16 I intend to do exactly that.

17 MR. HIPWELL: Thank you, Your Honor.

18 THE COURT: And you also have a unique circumstance of
19 which I am painfully aware which might call for a modification of
20 *Jencks* as well, so don't give up the ship.

21 MR. HIPWELL: Yes, sir.

22 MR. WALKER: And Your Honor, as it relates to *Brady* and
23 *Giglio* material, when we get that, we identify it and we turn it
24 over. We're not going to hold that until the week before trial.
25 We never do that.

1 MR. HIPWELL: Thank you, Mr. Walker.

2 THE COURT: That's on the record. He said they never
3 do that.

4 MR. WALKER: It's true. We don't. You know that.

5 MR. STANFORD: Judge, May 24th is going to be for
6 Mr. Walker to file his -- I think the Court directed that he
7 distinguish the cases that --

8 THE COURT: I want a brief. I don't want a motion.
9 There are cases that I am aware of that suggest that I can order
10 the early production of a witness list. He has concerns about
11 that and he tells me he has cases that say I should not. I want
12 to know what those cases are and why I should not.

13 All right. Mr. Washington?

14 MR. WASHINGTON: Your Honor, just following up on
15 something that Mr. Walker said a minute ago and you as well. You
16 indicated that you could fashion an order appropriate for the
17 sharing of this kind of information, and I think I understand
18 what you were saying about that, but I just want to make sure
19 that the Court is aware that there is to my knowledge no joint
20 defense agreement amongst these parties.

21 Now, that's not to say that we haven't cooperated with
22 each other or we haven't shared this and that and the other, but
23 at the end of the day this is not a joint defense. As we go
24 forward here, we are separate and independent.

25 THE COURT: All right. I know exactly how that works.

1 If Mr. Stanford were to ask you for something, you can say pound
2 sand if you want to, but if you don't see any prejudice in doing
3 it, you can give it to him. I know how that works. That doesn't
4 necessarily mean it's a joint defense agreement, but if I need to
5 fashion some protection and you want to tell me a suggestion,
6 I'll take that on the 24th as well.

7 MR. WASHINGTON: Thank you, Your Honor.

8 MR. WALKER: Thank you, Judge. I sure hope we get to
9 stop talking.

10 THE COURT: Mr. McCann, do you want to say anything?

11 MR. MCCANN: No, sir.

12 THE COURT: Anybody else want to say anything?

13 MR. DOMINGUE: I would like to say something off the
14 record.

15 THE COURT: All right. We're adjourned.

16 (Proceedings adjourned.)

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19 Certificate

20 I hereby certify this 23rd day of May, 2013, that the foregoing
21 is, to the best of my ability and understanding, a true and
22 correct transcript from the record of proceedings in the
above-entitled matter.

23 _____ /s/ LaRae E. Bourque

24 Official Court Reporter
25